United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 15-1472**
	)	**Issued: November 23, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Louisville, KY, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 29, 2015 appellant filed a timely appeal of a February 18, 2015 merit decision and a May 6, 2015 nonmerit 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 the case.[2]

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained a traumatic injury on January 11, 2014 in the performance of duty; and (2) whether the Branch of Hearings and Review properly denied appellant's request for a review of the written record following her oral hearing.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Following this decision by an OWCP hearing representative, appellant submitted additional new evidence. As OWCP did not review this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On February 27, 2014 appellant, then a 39-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained torn muscles in the upper back and a bulging disc in her neck on January 11, 2014 in a motor vehicle accident. She stated that she was stopped at a mailbox and her vehicle was struck from behind by another vehicle.

Donna Isfort, an advanced practice registered nurse, completed a note on January 15, 2014 removing appellant from postal work. Dr. Paula Robinson, a Board-certified family practitioner, completed a note dated January 30, 2014 and provided appellant with restrictions of no prolonged standing, no lifting over eight pounds, no repetitive lifting, and no climbing, crawling, kneeling, stooping, pushing, or pulling. She further stated that appellant must be able to change positions at liberty to relieve pain. Dr. Michael R. Heilig, a Board-certified orthopedic surgeon, examined appellant on February 14, 2014 and noted that she required light duty.

OWCP requested additional factual and medical evidence in support of appellant's claim by letter dated March 12, 2014. It afforded her 30 days for a response. On March 19, 2014 appellant submitted a narrative statement alleging that while she was stopped in her vehicle delivering mail another vehicle struck her car at a high rate of speed totaling her vehicle. She stated that her car was pushed forward 20 feet. Appellant stated that the employing establishment did not have light-duty work available for her, but that she was able to work at her concurrent employment as it was within her restrictions of no lifting or twisting.

Kurt Schlenther, a physician assistant, completed a CA-17 form report dated March 17, 2014, indicating work restrictions and a recommendation to continue physical therapy.

By decision dated April 14, 2014, OWCP denied appellant's claim finding that she failed to submit sufficient medical evidence to establish that a diagnosed condition resulted from her accepted employment incident.

Dr. Heilig examined appellant on May 5, 2014 and found that test results revealed mild bilateral cubital tunnel syndrome with no definitive cervical radiculopathy. He diagnosed degenerative disc disease of the cervical spine, particularly at C5-6, mild degenerative disc disease of the lumbar spine, bilateral hip trochanteric bursitis and sciatica, bilateral upper extremity radiculopathy, and bilateral cervical trapezial trigger points with pain.

In a report dated May 13, 2014, Dr. Heilig noted that he treated appellant for cervical and lumbar pain as well as occasional symptoms in her upper extremities including numbness, tingling, and a burning sensation in her hands. He opined that appellant's conditions were due to a motor vehicle accident on January 11, 2014 during which appellant, while working for the employing establishment, was rear ended by another vehicle.

Appellant requested an oral hearing from OWCP's Branch of Hearings and Review through a form received by OWCP on May 19, 2014. She also submitted a third-party complaint against the driver of the other vehicle. Appellant testified at the oral hearing which was held on December 9, 2014. She stated that on January 11, 2014 she was delivering mail in her vehicle

when it was struck from behind by another car. Appellant was transported by ambulance to a local hospital and was dismissed based on negative x-rays. After a few days, she developed pain and sought medical treatment from Dr. Heilig.

Dr. Heilig submitted a note dated January 22, 2015 and diagnosed degenerative disc disease of the cervical spine, degenerative disc disease of the lumbar spine, bilateral hip bursitis and sciatica, bilateral upper extremity radiculopathy, and bilateral cervical trapezial pain. He noted that appellant had occasional symptoms in her upper extremities including numbness, tingling, and a burning sensation in her hands. Dr. Heilig noted, "This is due to a motor vehicle accident that occurred on January 11, 2014, while working for the [employing establishment], and was rear ended by another vehicle."

Dr. Ryan Carter Cassidy, a Board-certified orthopedic surgeon, examined appellant on November 10, 2014 and described her January 11, 2014 employment incident. He noted that appellant was working two jobs, for the employing establishment and at a social services office. Dr. Cassidy found significant muscle spasms and tightness in her paraspinal musculature as well as tenderness to light palpation in her cervical spine and lumbar paraspinal musculature. He reviewed appellant's cervical magnetic resonance imaging (MRI) scan and found disc protrusion at C5-6. Dr. Cassidy noted that appellant had a significant injury while delivering mail. He opined that it was not unusual to have significant long-lasting pain after rear collision-type injuries.

Appellant underwent an electroneuromyography (EMG) test on April 29, 2014 which demonstrated neuropathies at the bilateral ulnar nerves at the elbows. A cervical MRI scan report dated November 4, 2014 demonstrated disc degeneration throughout the cervical spine and mild central canal stenosis at C5-6.

By decision dated February 18, 2015, an OWCP's hearing representative found that appellant had not submitted sufficient medical opinion evidence to establish a diagnosed condition resulting from her accepted employment incident. He noted that no physician had provided an explanation of how any diagnosed condition, rather than appellant's symptomology, was causally related to her motor vehicle accident.

Appellant requested a review of the written record from OWCP's Branch of Hearings and Review through a form dated March 20, 2015 and received by OWCP's Branch of Hearings and Review on April 7, 2015.

By decision dated May 6, 2015, OWCP's Branch of Hearings and Review denied appellant's request for a review of the written record as she had previously received an oral hearing on February 18, 2015. The Branch of Hearings and Review noted that appellant was not, as a matter of right, entitled to another review by OWCP's Branch of Hearings and Review on the same issue. The Branch of Hearings and Review reviewed appellant's claim in its discretion and determined that the case could equally well be addressed through the reconsideration process.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[3] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and 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 or specific condition for which compensation is claimed is 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 upon a traumatic injury or an occupational disease.[5]

OWCP defines 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."[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. 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]

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.[9] Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.[10]

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[3] 5 U.S.C. §§ 8101-8193.

[4] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] 20 C.F.R. § 10.5(ee).

[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] *J.Z.*, 58 ECAB 529 (2007).

[9] *T.F.*, 58 ECAB 128 (2006).

[10] *A.D.*, 58 ECAB 149 (2006).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not submitted sufficient medical opinion evidence to establish that her diagnosed conditions were causally related to her January 11, 2014 employment incident.

Appellant has established that she was involved in a motor vehicle accident on January 11, 2014 while in the performance of duty. In support of her claim, she submitted a series of reports from various physicians. Dr. Heilig examined appellant on May 5, 2014 and diagnosed degenerative disc disease of the cervical spine, more severe at C5-6, mild degenerative disc disease of the lumbar spine, bilateral hip trochanteric bursitis and sciatica, bilateral upper extremity radiculopathy, and bilateral cervical trapezial trigger points with pain. He repeated his diagnoses on January 22, 2015 and noted that these conditions were due to her January 11, 2014 employment injury. The Board finds that Dr. Heilig's reports are insufficient to meet appellant's burden of proof as he did not provide any medical reasoning explaining how or why the diagnosed degenerative conditions would be caused or aggravated by appellant's motor vehicle accident. Without any medical reasoning explaining the causal relationship, whether direct causation or aggravation, between the conditions of degenerative disc disease, hip bursitis, radiculopathy, and cervical trigger pain, appellant has not met her burden of proof in establishing a traumatic injury claim.

Dr. Cassidy examined appellant on November 10, 2014 and described her employment incident. He found disc protrusion at C5-6 on the MRI scan and noted that appellant had a significant injury while delivering mail. Dr. Cassidy opined that it was not unusual to have significant long-lasting pain after rear collision-type injuries. He did not clearly opine whether appellant's disc protrusion at C5-6 was caused or aggravated by her accepted employment injury, nor did he describe how this injury occurred. Dr. Cassidy also diagnosed pain as a result of the motor vehicle accident. The Board has held that the mere diagnosis of "pain" does not constitute the basis for payment of compensation.[11] For these reasons, the Board finds that Dr. Cassidy's report is insufficient to meet appellant's burden of proof and establish a traumatic injury claim.

Appellant also submitted a note from Dr. Robinson which failed to provide a diagnosis of any condition and cannot meet her burden of proof to establish an injury resulting from the January 11, 2014 employment-related motor vehicle accident. She submitted reports from Ms. Isfort, an advanced practice registered nurse, and Mr. Schlenther, a physician's assistant, in support of her claim. As neither registered nurses,[12] nor physicians' assistants,[13] are considered physicians under FECA, these reports do not constitute medical evidence and lack the necessary probative value to establish appellant's traumatic injury claim.[14]

[11] *Robert Broome*, 55 ECAB 339 (2004).

[12] *C.B.*, Docket No. 15-0746 (issued May 20, 2015).

[13] *D.S.*, Docket No. 15-0821 (issued July 2, 2015).

[14] 5 U.S.C. § 8101(2) of FECA provides as follows: physicians includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005).

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides that before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his or her claim before a representative of the Secretary.[15] Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.[16] OWCP regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.[17]

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA,[18] has the power to hold hearings and reviews of the written record in certain circumstances where no legal provision was made for such reviews and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing or review of the written record.[19] OWCP procedures, which require OWCP to exercise its discretion to grant or deny a hearing or review of the written record when the request is untimely or made after reconsideration, are a proper interpretation of FECA and Board precedent.[20] This includes the situation where a claimant requests a second hearing on an issue. There is no provision in FECA for more than one hearing on the same issue.[21] If a request for a second hearing is made, appellant is not entitled to a hearing as a matter of right, but OWCP must exercise its discretion in determining whether to grant a hearing.

ANALYSIS -- ISSUE 2

On March 20, 2015 appellant requested a review of the written record hearing on the April 14, 2014 decision denying her traumatic injury claim. However, she had previously requested and received a telephonic hearing on December 9, 2014, regarding the April 14, 2014 decision. This resulted in the hearing representative's February 18, 2015 decision. As appellant previously received a telephonic hearing, she is not entitled to another hearing or review of the

[15] 5 U.S.C. § 8124(b)(1).

[16] 20 C.F.R. § 10.615.

[17] *Id*. at § 10.616(a).

[18] *Supra* note 3.

[19] *Marilyn F. Wilson*, 52 ECAB 347 (2001).

[20] *Teresa M. Valle*, 57 ECAB 542 (2006).

[21] *See J.S.*, Docket No. 14-1636 (issued December 9, 2014); *R.F.*, Docket No. 13-892 (issued July 5, 2013); *John S. Baldwin*, 35 ECAB 1161 (1984).

written record as a matter of right. There is no provision in FECA for more than one hearing or review of the written record on the same issue.[22]

When a claimant has previously requested reconsideration or requests a second hearing or review of the written records on the same issue, OWCP must exercise its discretionary authority to grant or deny the request. It has considered the same issue in its April 14, 2014 decision and found that the matter could be equally well addressed by submitting new and relevant evidence with an application for reconsideration. The Board finds that OWCP properly exercised its discretion in denying appellant's request for a review of the written record.[23]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a traumatic injury on January 11, 2014 in the performance of duty. The Board further finds that OWCP's Branch of Hearings and Review properly denied appellant's request for a review of the written record following her oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the May 6 and February 18, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 23, 2015
Washington, DC

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

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

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

[22] *Id.*

[23] *Id.*