United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 15-1546**
	)	**Issued: November 20, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Larchmont, NY, Employer	)	

Appearances:
Alan J. Shapiro, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 10, 2015 appellant, through counsel, filed a timely appeal of a March 24, 2015 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 merit decision in the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury causally related to a December 3, 2013 employment incident.

FACTUAL HISTORY

On December 3, 2013 appellant, then a 43-year-old customer service supervisor, filed a traumatic injury claim (Form CA-1) alleging that on that date, while descending steps at work, she felt low back pain and her leg gave out causing her to fall and injure her left arm, left

[1] 5 U.S.C. § 8101 *et seq.*

shoulder, and the upper and lower back. She stopped work on December 3, 2013. The postmaster noted that on December 3, 2013 at 5:15 a.m. appellant received a call from a clerk that appellant fell down the stairs at work and was taken to a hospital. Appellant reported descending steps and feeling low back pain which caused her to fall on her left side.

Appellant was treated in the emergency room on December 3, 2013 for a bone bruise and shoulder pain. She submitted a note from Dr. Edward Kirby, a Board-certified orthopedic surgeon, dated December 4, 2013, who noted she was excused from work from December 3 to 14, 2013. In a work capacity form dated December 13, 2013, Dr. Kirby noted that appellant could work four hours per day with restrictions.

By letter dated December 24, 2013, OWCP advised appellant of the type of evidence needed to establish her claim, particularly requesting that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

On January 5, 2014 appellant responded to an OWCP questionnaire and noted the cause of her back and leg pain was an injury in 2010 in which she injured her right side and lower back. She submitted a patient care report from the emergency medical technician who noted that appellant was found in the employing establishment at the bottom of the stairs. Appellant reported tripping on the stairs and breaking her fall with her left arm.

In an attending physician's report (Form CA-16) dated December 3, 2013, Dr. Kirby noted that appellant reported falling down. He diagnosed lumbar strain and sprain of the left shoulder. Dr. Kirby noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. He noted that she was totally disabled from December 3, 2013 to January 2, 2014. In another December 3, 2013 report, Dr. Kirby treated appellant for an injury to her left shoulder and low back. Appellant reported falling down four stairs at work and injuring her low back and left shoulder. Dr. Kirby noted her history was significant for having an ongoing active problem with right-sided low back pain and a herniated disc. He noted findings on examination of left shoulder tenderness to palpation over the anterior lateral portion. The lower back had tenderness to palpation along the segments. Dr. Kirby diagnosed lumbosacral strain, chronic right-sided herniated nucleus pulposus and sprain, and contusion of the left shoulder.

In a December 13, 2013 report, Dr. Kirby noted treating appellant in follow-up for her left shoulder and low back work injuries of December 3, 2013. He noted findings and diagnosed impingement of the left shoulder and lumbosacral strain and returned her to work with restrictions. In a January 2, 2014 report, Dr. Kirby noted that appellant reported the pain in the lateral aspect of the left elbow and low back. He noted that examination of the left elbow revealed no soft tissue swelling, marked tenderness to palpation over the lateral epicondyle, full range of motion, no instability with intact sensation, and reflexes. Examination of the low back revealed tenderness and spasm in lower lumbar segments to palpation. Dr. Kirby diagnosed lumbosacral strain and lateral epicondylitis, left elbow. He injected the lateral epicondyle with a steroid and continued appellant's work restrictions.

Appellant also submitted a December 23, 2013 report from Dr. Kenneth Hansraj, a Board-certified orthopedic surgeon, who treated her for worsening low back pain that began on

December 3, 2013 after a fall. She reported numbness and weakness in the lower back. Dr. Hansraj diagnosed cervical and lumbar spondylosis and diagnostically noted appellant complained of low back pain that started on December 3, 2013 as a result of falling. In a note dated December 23, 2013, he treated her for cervical and lumbar spondylosis. Dr. Hansraj noted that appellant was temporarily disabled and would remain out of work until further notice.

In a January 24, 2014 decision, OWCP denied the claim finding that the evidence was insufficient to establish that she sustained an injury or medical condition which arose during the course of employment and within the scope of compensable work factors.

On January 31, 2014 appellant requested an oral hearing which was held before an OWCP hearing representative on August 18, 2014. She was treated by Dr. Gregory Chiaramonte, a Board-certified orthopedic surgeon, from January 23 to April 21, 2014. On January 23, 2014 Dr. Chiaramonte treated appellant for left shoulder pain after she reported falling downstairs at work. He noted acromioclavicular tenderness and equivocal impingement. Dr. Chiaramonte diagnosed acromioclavicular injury. On January 29, 2014 he referred appellant for physical therapy. In a February 17, 2014 note, Dr. Chiaramonte treated her for left shoulder pain and diagnosed bursal tear, surface of the lateral supraspinatus tendon by magnetic resonance imaging (MRI) scan. He noted a date of injury of December 3, 2013 and advised that appellant could return to work light duty in a week. On April 21, 2014 Dr. Chiaramonte indicated that she was still symptomatic after physical therapy. Examination revealed moderate pain with restriction on range of motion. Appellant also submitted physical therapy notes.

In a decision dated November 4, 2014, an OWCP hearing representative affirmed the decision dated January 24, 2014.

On January 12, 2015 appellant requested reconsideration. She submitted a December 4, 2014 report from Dr. Chiaramonte who noted she fell down stairs at work on December 3, 2013. Dr. Chiaramonte noted findings of pain and restricted range of motion. He noted appellant's MRI scan of the right shoulder revealed a rotator cuff tear and probable labral tear. Dr. Chiaramonte noted with regard to causal relationship "yes."

In a decision dated March 24, 2015, OWCP denied modification of the decision dated November 4, 2014.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 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 occupational disease.[2]

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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 medical evidence to establish that the employment incident caused a personal injury.[3]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.[4]

ANALYSIS

It is not disputed that on December 3, 2013 appellant was descending stairs at work, her leg gave out, and she fell. It is also not disputed that she was diagnosed with a lumbar strain, left shoulder sprain, left lateral epicondylitis, cervical, and lumbar spondylosis, and left rotator cuff tear. However, appellant has not submitted sufficient medical evidence to establish that her diagnosed conditions were caused or aggravated by this incident at work.

Appellant submitted reports from Dr. Chiaramonte dated January 23 to April 21, 2014 who treated her for left shoulder pain after she fell downstairs at work on December 3, 2013. Dr. Chiaramonte diagnosed acromioclavicular injury, bursal tear, surface of the lateral supraspinatus tendon. He noted appellant was still symptomatic after physical therapy. Similarly, a December 4, 2014 report from Dr. Chiaramonte noted that she fell downstairs at work on December 3, 2013. He noted that a right shoulder MRI scan revealed a rotator cuff tear and probable labral tear. Dr. Chiaramonte noted with regard to causal relationship "yes." Although he supported causal relationship by noting "yes" he did not provide additional medical rationale sufficiently explaining the basis of his conclusion opinion regarding the causal relationship between appellant's diagnosed conditions and her fall while descending stairs at work. This evidence was insufficient to show that appellant sustained a work-related injury in the performance of duty.

Appellant submitted reports from Dr. Kirby dated December 3, 2013 to January 2, 2014. Dr. Kirby noted her history was significant for having an ongoing active problem with right-sided low back pain and a herniated disc. He diagnosed lumbosacral strain, superimposed and chronic right-sided herniated nucleus pulposus, sprain and contusion of the left shoulder, and lateral epicondylitis, left elbow. However, Dr. Kirby merely repeats the history of injury as reported by appellant without providing his own opinion regarding whether her condition was work related. To the extent that he is providing his own opinion, Dr. Kirby failed to provide a rationalized opinion regarding the causal relationship between appellant's lumbosacral strain, superimposed and chronic right-sided herniated nucleus pulposus, sprain and contusion of the

[3] *T.H.*, 59 ECAB 388 (2008).

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

left shoulder, and lateral epicondylitis and the factors of employment believed to have caused or contributed to such condition.[5] Therefore, these reports are insufficient to meet appellant's burden of proof.

In an attending physician's report dated December 3, 2013, Dr. Kirby diagnosed lumbar strain and sprain of the left shoulder and noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. He noted that she was totally disabled from December 3, 2013 to January 2, 2014. However, the Board has held that an opinion on causal relationship which consists only of a physician checking a box marked "yes" regarding causal relationship is of little probative value. Without any explanation or rationale for the conclusion reached, such a report is insufficient to establish causal relationship.[6] Other reports from Dr. Kirby are of limited probative value as they did not provide a history of injury or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.[7]

Appellant submitted a December 23, 2013 report from Dr. Hansraj who treated her for worsening low back pain after a fall on December 3, 2013. Dr. Hansraj diagnosed cervical and lumbar spondylosis. In a note dated December 23, 2013, he treated appellant for cervical and lumbar spondylosis. Dr. Hansraj noted that she was temporarily disabled and would remain out of work until further notice. These reports are insufficient to establish the claim as he did not provide a clear history of the work incident in which appellant fell and did not explain how this incident caused or aggravated any diagnosed medical condition.

Appellant also submitted evidence such as emergency room and emergency medical technician records that were not signed by a physician. This may not be considered medical evidence and is of no probative medical value.[8] Likewise, physical therapy records provided by appellant are of no probative medical value.[9]

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated, or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by

[5] *Id.*

[6] *Lucrecia M. Nielson,* 41 ECAB 583, 594 (1991).

[7] *A.D.*, 58 ECAB 149 Docket No. 06-1183 (issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[8] *See R.M.*, 59 ECAB 690 (2008); *Bradford L. Sullivan,* 33 ECAB 1568(1982) (where the Board held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

[9] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

rationalized medical opinion evidence.[10] Appellant failed to submit such evidence, and OWCP therefore properly denied appellant's claim for compensation.

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 causally related to a December 3, 2013 employment incident.

[10] *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the March 24, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 20, 2015
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board