United States Department of Labor
Employees' Compensation Appeals Board

D.G., Appellant	)	
and	)	**Docket No. 15-1678**
	)	**Issued: November 25, 2015**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, King of Prussia, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 4, 2015 appellant filed a timely appeal from a May 15, 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 merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty, on December 5, 2014, as alleged

[1] 5 U.S.C. § 8101 *et seq.*

[2] On appeal, appellant submitted additional evidence. However, the Board lacks jurisdiction to review new evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On December 8, 2014 appellant, then a 60-year-old revenue officer, filed a traumatic injury claim (Form CA-1) alleging that on December 5, 2014 she sustained an injury to her back and legs in the performance of duty. She claimed that her chair rolled from under her when she attempted to sit down. Appellant stopped work on December 9, 2015.

On December 9, 2014, Dr. Shahana Karim, an internist, ordered physical therapy twice a week for six weeks. In a January 8, 2015 disability status report, she advised that appellant stopped work on December 9, 2014 due to a work injury that caused low back pain. Dr. Karim noted that appellant was able to work on February 9, 2015 without restrictions.

Multiple reports, signed by a physical therapist, assessed low back pain and noted the course of therapy.

By letter dated April 8, 2015, OWCP advised appellant of the type of evidence needed to establish her claim. It allowed her 30 days from the date of the letter to submit responsive evidence.

By decision dated May 15, 2015, OWCP denied appellant's claim because the medical evidence of record did not contain a diagnosed medical condition in connection with the work incident.

On appeal appellant restates the history of the injury and notes that she was asymptomatic prior to the December 5, 2014 incident. She asserts that she was in pain every day and unable to perform some of her duties when she returned to work.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[3] including that he or she is an "employee" within the meaning of FECA and that he or she filed the claim within the applicable time limitation.[4] The employee must also establish that he or she sustained an injury in the performance of duty as alleged and that his or her disability for work, if any, was causally related to the employment injury.[5]

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 he or she actually experienced the employment

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *R.C.*, 59 ECAB 427 (2008).

[5] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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.[6]

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.[7]

ANALYSIS

The record supports that on December 5, 2014 appellant's chair rolled from under her as she attempted to sit down. The Board finds, however, that she has failed to establish a diagnosed medical condition causally related to this incident.

The only evidence received by OWCP was a disability status report, a prescription for physical therapy, and multiple physical therapy notes. Although the January 8, 2015 disability status report from Dr. Karim attributes appellant's low back pain to a work injury it is not sufficient to discharge her burden of proof. Dr. Karim's diagnosis of low back pain, without any explanation of the back condition causing the pain, is a description of a symptom rather than a firm diagnosis of a compensable medical condition.[8] His December 9, 2014 physical therapy order did not address the cause of appellant's low back condition.

Appellant submitted multiple physical therapy notes. However, physical therapists are not considered physicians as defined under FECA.[9]

On April 8, 2015 OWCP advised appellant of her responsibility to provide a comprehensive medical report from a physician addressing how the employment incident caused her condition. Appellant did not submit any medical evidence in response to its request. As there is no rationalized medical report containing a history of injury, diagnosis of her condition, and rationale addressing how her claimed injury was caused by her employment, the Board finds that she had not established a traumatic injury in the performance of duty on December 5, 2014.

On appeal appellant reiterates that the history of injury, notes that she was asymptomatic prior to the work incident, and notes that she was unable to return to her full duties following the

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

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

[8] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[9] *A.C.*, Docket No. 08-1453 (issued November 18, 2008). Under FECA, a "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

incident. OWCP denied her claim as the medical component of fact of injury had not been established.[10] Appellant has not met her burden in this case.

Appellant may submit new evidence or argument as part of a formal 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 December 5, 2014.

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 25, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[10] *See Beverly A. Spencer*, 55 ECAB 501 (2004) (the mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two).