United States Department of Labor
Employees' Compensation Appeals Board

K.S., Appellant	)	
and	)	**Docket No. 16-0130**
	)	**Issued: April 19, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Albany, NY, Employer	)	

Appearances:
George P. Ferro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 30, 2015 appellant, through counsel, filed a timely appeal from an August 20, 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.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury causally related to a September 30, 2014 employment incident.

FACTUAL HISTORY

On September 30, 2014 appellant, then a 35-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date, she felt a twinge in the lower left side while exiting her delivery vehicle to deliver mail while in the performance of duty. She stopped work on October 1, 2014.

[1] 5 U.S.C. § 8101 *et seq.*

In an October 6, 2014 letter, OWCP advised appellant that additional factual and medical evidence was needed. It explained that a physician's opinion explaining how the reported work incident caused or contributed to appellant's condition was crucial to her claim.

In a September 30, 2014 initial report, Dr. John C. Radford, Board-certified in emergency medicine, noted that on September 30, 2014 appellant was delivering mail and parcels when she was exiting her work vehicle and felt a sharp pain in her lower and middle back. He diagnosed a lumbosacral strain and checked the box marked "yes" in response to whether the incident was the cause of the injury. In addition, Dr. Radford checked the box marked "yes" in response to whether the patient's complaints were consistent with the history of injury/illness and to whether the patient's history was consistent with the objective findings. He assigned 20 percent temporary impairment. Dr. Radford indicated that appellant had low back pain that was tender to palpation. He listed work restrictions on bending, twisting, no lifting over 10 pounds, operation of motor vehicles, no driving a route truck/van, no pushing, and no overhead work. OWCP also received reports from physician assistants and nurses.

In an October 14, 2014 narrative statement, appellant indicated that, while delivering mail on September 30, 2014, she turned to exit her vehicle and took a few steps. She noted that she felt a pain and twinge in her lower back and the left side. Appellant advised that she had no symptoms or disability with her back prior to this day.

In an October 10, 2014 report, Dr. Thomas Haher, a Board-certified orthopedic surgeon, noted that appellant presented with pain and dysfunction in the lumbar spine with no radiation in the lower extremity and lower back pain. He explained that on September 30, 2014 she complained of low back pain with no radiculopathy. Dr. Haher advised that appellant was seen in urgent care, x-rayed and denied having radicular pain. He found no weakness or sensory loss of the lower extremities. Dr. Haher related that appellant's pain was in her posterior and was sharp and severe. He found the problem was worsened by bending and worsened in the morning, but was relieved by ice. Dr. Haher advised that appellant underwent physical therapy. He examined her and diagnosed lower back pain. In an October 10, 2014 duty status report, Dr. Haher diagnosed a muscle strain due to her injury. He indicated that appellant was not advised to return to work.

By decision dated November 18, 2014, OWCP denied appellant's claim finding that she did not submit sufficient medical evidence establishing that a diagnosed condition was attributable to the claimed work incident. Therefore, appellant did not establish fact of injury.

On January 13, 2015 appellant requested reconsideration and submitted new medical evidence. In a November 10, 2014 report, Dr. Haher noted that appellant presented for follow up and had attended physical therapy for the past month. He advised that she was frustrated by persisting pain. Dr. Haher examined appellant and provided findings which included that she had difficulty moving from a seated to a standing position due to low back pain and she appeared to be in moderate pain. Examination of the spine and gait indicated that her station was normal, her spinal alignment had normal lordosis, and she had a well-healed incision.[2] Dr. Haher diagnosed lower back pain and lumbar radiculopathy. He opined that the incident described by the patient was a competent medical cause of this injury and that the patient's complaints were

[2] Dr. Haher did not further elaborate on what procedure or incident that gave rise to the incision.

consistent with the history of injury/illness, which was consistent with the objective findings. Dr. Haher advised that appellant was not working.

In a December 1, 2014 report, Dr. Haher again noted that appellant was not working. He related that she came in frustrated with persistent complaints, left-sided lower back pain, and radicular-type pain into the left-sided buttock. Dr. Haher indicated that appellant underwent physical therapy and took anti-inflammatory medicine and was still unable to return to work. He advised that she was complaining of this type of pain for the past two months since she stepped out of her mail truck awkwardly on September 30, 2014. Dr. Haher examined appellant and provided findings. He diagnosed lower back pain. Dr. Haher opined that appellant's symptoms were causally related to the injury on September 30, 2014.

Dr. Haher saw appellant on December 19, 2014 and advised in a report that physical therapy was ineffective. He repeated his diagnosis of lower back pain and opined that the incident on September 30, 2014 was the cause of her current symptoms. OWCP also received nurses notes and physical therapy notes, and copies of previously submitted reports.

By decision dated January 30, 2015, OWCP denied modification of its prior decision.

In a June 5, 2015 letter, counsel for appellant again requested reconsideration. He submitted new medical evidence and argued that the new medical evidence supported causal relationship.

In a December 19, 2014 duty status report, Dr. Haher diagnosed low back pain and advised that appellant was unable to work. On January 22, 2015 he reported that appellant's pain persisted and physical therapy was not effective. Dr. Haher diagnosed lower back pain. He reiterated that the incident described by appellant was a competent medical cause of her injury and that her complaints were consistent with the history of injury/illness, which was consistent with the objective findings. Dr. Haher advised that she was totally disabled. In a March 13, 2015 report, he saw appellant and repeated his opinion on causal relationship. In a March 27, 2015 report, Dr. Haher diagnosed lower back pain and lumbar radiculopathy. He explained that due to the severity of her pain, appellant was a candidate for pain management or surgery. Dr. Haher again advised that she was unable to work and repeated his opinion on causal relationship.

On June 15, 2015 Dr. Haher examined appellant and provided findings. He diagnosed lower back pain, lumbar radiculopathy and lumbar herniated disc. Dr. Haher advised that appellant was totally disabled and reiterated that the work incident described by her was a competent cause of her injury. He indicated that her "complaints were consistent with the history of the injury/illness. [Appellant's] history of the injury/illness is consistent with my objective findings. The percentage of temporary impairment is 100 percent. [Appellant] is not working at this time. [She] is on total disability until next visit or further notice."

A March 20, 2015 magnetic resonance imaging (MRI) scan of the lumbosacral spine revealed L5-S1 disc degeneration with moderate central disc protrusion extrusion subtype with mild indents of the ventral sac and mild right greater than left foraminal narrowing. OWCP also received physical therapy reports and copies of prior reports.

By decision dated August 20, 2015, OWCP denied modification if its prior decision finding that appellant's physician failed to provide sufficient medical rationale supported by objective medical evidence and an accurate history to establish that the diagnosed lumbar conditions were causally related to the work incident of September 30, 2014.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 timely filed within the applicable time limitation period of FECA[4] and that an injury was sustained in the performance of duty.[5] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or 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]

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.[9]

ANALYSIS

Appellant alleged that on September 30, 2014 she felt a twinge in her back in the lower left side while exiting her delivery vehicle to deliver mail in the performance of duty. OWCP found and the evidence supports that she exited her work vehicle on September 30, 2014 as alleged. The Board thus finds that the first component of fact of injury is established.

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[3] *Supra* note 1.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[8] *Id.* For a definition of the term "traumatic injury," *see* 20 C.F.R. § 10.5(ee).

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

The medical evidence of record, however, is insufficiently rationalized to establish the second component of fact of injury, that the employment incident caused an injury. The medical evidence contains no reasoned explanation of how the September 30, 2014 employment incident caused or aggravated an injury.[10]

In reports dated November 10, December 1 and 19, 2014, Dr. Haher examined appellant and provided findings and diagnosed lower back pain and lumbar radiculopathy. He opined that the incident described by appellant was a competent cause of her injury and that her complaints were consistent with the history of injury/illness and with objective findings.[11] In other reports, such as those issued on January 22, March 13 and 27, and June 15, 2015, Dr. Haher expressed a similar opinion on causal relationship and advised that appellant was totally disabled. However, it is unclear how he formed this conclusion. The record reflects that appellant has degenerative conditions revealed on MRI scan and he has not adequately explained how he arrived at this conclusion. While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[12] Dr. Haher has not explained why exiting a work vehicle on September 30, 2014, caused or aggravated appellant's diagnosed conditions.

In a September 30, 2014 initial report, Dr. Radford, noted that on September 30, 2014 appellant was delivering mail and parcels when she was exiting her work vehicle and felt a sharp pain in her lower and middle back. He diagnosed a lumbosacral strain and checked the box marked "yes" in response to whether the incident was the cause of the injury. Dr. Radford also checked the box marked "yes" in response to whether the patient's complaints were consistent with the history of injury/illness and to whether the patient's history was consistent with the objective findings. However, he did not explain how he arrived at this conclusion. The checking of a box marked "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[13]

[10] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[11] It is unclear whether Dr. Haher presents an accurate history in his November 10, 2014 report as he indicates that appellant has no prior surgical history involving the back but his examination findings for the spinal area indicate that appellant has a well-healed old surgical incision. The Board has held that medical opinions based upon an incomplete history have little probative value. *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962).

[12] *Samuel Senkow*, 50 ECAB 370 (1999); *Thomas A. Faber*, 50 ECAB 566 (1999).

[13] *Calvin E. King*, 51 ECAB 394 (2000).

Other medical reports of record are of limited probative value and insufficient to establish the claim as they do not contain a physician's opinion supporting causal relationship.[14]

OWCP also received reports from physician assistants, nurses, and physical therapists. Section 8101(2) of FECA[15] provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Consequently, this evidence cannot be considered medical evidence as physician assistants, nurses, and physical therapists are not considered physicians under FECA.[16]

Because the medical reports submitted by appellant do not adequately address how the September 30, 2014 activities at work caused or aggravated a back condition, these reports are of limited probative value[17] and are insufficient to establish that the September 30, 2014 employment incident caused or aggravated a specific injury.[18]

On appeal, appellant's counsel made several arguments in support of her claim. He contended that she had established causal relationship. However, as found above, the evidence was insufficient to establish causal relationship.

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 that she sustained a traumatic injury causally related to a September 30, 2014 employment incident.

[14] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that 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).

[15] *See* 5 U.S.C. § 8101(2). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

[16] Lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA. *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

[17] *See Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

[18] The record contains a Form CA-16 dated September 30, 2014 and signed by the employing establishment. A properly executed CA-16 form can form a contractual agreement for payment of medical expense, even if the claim is not accepted. *See* 20 C.F.R. § 10.300; *Val D. Wynn*, 40 ECAB 666 (1989); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (February 2012). Upon return of the case record, OWCP should address this issue.

ORDER

IT IS HEREBY ORDERED THAT the August 20, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 2016
Washington, DC

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

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

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