United States Department of Labor
Employees' Compensation Appeals Board

C.K., Appellant	)	
and	)	**Docket No. 16-0291**
	)	**Issued: April 20, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Charlotte, NC, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 2, 2015 appellant filed a timely appeal of a September 17, 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 has met her burden of proof to establish a traumatic injury causally related to a July 8, 2014 employment incident.

FACTUAL HISTORY

On August 13, 2014 appellant then a 59-year-old mail handler, filed a claim for recurrence of disability (Form CA-2a). She claimed that on July 8, 2014 she had a recurrence of back pain causally related to her work injury of January 5, 2010 while picking up a tub of mail. Appellant stopped work on July 8, 2014 and returned to work on August 15, 2014.

[1] 5 U.S.C. § 8101 *et seq.*

On September 5, 2014 OWCP noted that the recurrence of disability would be developed as a new traumatic injury claim.

Appellant was treated by Dr. Charity L. Karwowski, a Board-certified family practitioner, on July 31, 2014 for radiating left hip pain. She reported worsening hip pain since July 4, 2014 but denied any traumatic injury. Appellant had mild degenerative changes shown on a 2010 hip x-ray. She reported her pain interfered with her work duties, household tasks, and sleep. Dr. Karwowski noted findings on examination of normal strength and sensation to light touch and negative straight leg raise test bilaterally. She diagnosed left hip pain, possible lumbar radiculopathy and left hip arthritis. In an August 28, 2014 report, Dr. Karwowski treated appellant for a lumbar herniated disc and radiating back pain. Appellant reported her initial injury as January 5, 2010. She underwent a magnetic resonance imaging (MRI) scan of the lumbar spine which revealed spinal stenosis at L4-5 and a herniated disc at L5-S1. Appellant reported working for the employing establishment and noted that she was not currently able to perform her usual work duties due to her pain and had been provided sedentary light work. Dr. Karwowski diagnosed lumbar herniated disc, Type 2 diabetes mellitus and referred appellant to a neurosurgeon.

Dr. Anthony J. Kwon, a Board-certified orthopedist, treated appellant on September 11, 2014 for radiating left hip pain which began in July 2014. He noted intact stability, strength and sensation, normal reflexes, negative straight leg testing, and normal gait. Dr. Kwon diagnosed back pain, degenerative lumbar disc disease, left leg pain and herniated nucleus pulposus at L5-S1.

Appellant was treated by Dr. Sarjoo Bhagia, a Board-certified physiatrist on October 1, 2014, for chronic low back pain after a work-related injury. She reported that on July 8, 2014 she was trying to lift a box at work and developed low back pain radiating down the left leg with numbness and tingling. Examination findings included intact sensation in the arms, slight numbness and decreased sensation to light touch of the legs, slight lumbosacral tenderness, positive straight leg raise on the left, equal and symmetrical deep tendon reflexes bilaterally, and intact strength in the both legs. Dr. Bhagia noted an MRI scan of the lumbosacral spine dated August 25, 2014 revealed a broad-based left L5-S1 disc protrusion with caudal extrusion, moderate canal stenosis at L4-5 and moderate facet degenerative changes at L4-5 and L5-S1 bilaterally. He diagnosed low back pain with radicular symptoms on the left side secondary to S1 radiculopathy on the left side from disc protrusion at L5-S1. Dr. Bhagia recommended left S1 nerve root blocks. He returned appellant to work with restrictions.

By letter dated October 10, 2014, OWCP advised appellant that her claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. It indicated that her claim was administratively handled to allow medical payments up to $1,500.00; however, the merits of the claim had not been formally adjudicated. OWCP advised that, because appellant has requested authorization for lumbar surgery, her claim would be formally adjudicated. It requested that appellant submit additional information, including a comprehensive medical report from her treating physician explaining how the specific work incidents contributed to her claimed lumbar injury.

Appellant submitted a statement dated October 23, 2014 and noted that on July 8, 2014 while lifting tubs of mail from an all-purpose container she felt pain in her lower left hip area and

dropped the tub. She stated that it was the same pain she experienced after a work incident in 2010. Appellant reported working only four hours on July 8, 2014 and noted pain that affected her ability to walk, stand, stoop, or bend. She noted that she was unable to perform her regular job.

Appellant was treated by Dr. Bhagia on October 1, 2014 who sought to clarify the mechanism of injury for appellant's injury. She reported lifting a heavy tub of mail at work on July 8, 2014 which triggered left-sided back pain radiating down the left leg. Appellant initially thought her injury was a recurrence of her left hip pain from an osteoarthritic hip but an MRI scan of the lumbar spine revealed a herniated disc at L5-S1. Dr. Bhagia performed transforaminal epidural injections for lumbar radiculopathy secondary to disc herniation. He opined that it was more likely than not the heavy lifting resulted in the disc herniation which was a common mode of injury for disc herniations. Dr. Bhagia noted disc herniations may mimic hip arthritis pain and since appellant was previously treated for hip arthritis, it was reasonable for her to suspect that her old hip injury had flared. He noted that the injection into left hip did not provide improvement, which he believed confirmed that it was not the old hip pathology causing current symptoms.

On October 28, 2014 appellant was treated by Dr. Karwowski for hip pain. She reported that she lifted a heavy container of mail at work on July 8, 2014 and experienced immediate hip pain. Dr. Karwowski noted an MRI scan showed spinal stenosis at L4-5 and a bulging disc at L5-S1. She noted that appellant's job required repetitive standing, lifting, and bending, which likely aggravated her bulging disc and spinal stenosis.

In a decision dated December 8, 2014, OWCP denied appellant's compensation claim as she had failed to submit sufficient medical evidence to substantiate that the current medical conditions were the result of the work incident of July 8, 2014.

On January 5, 2015 appellant requested an oral hearing which was held before an OWCP hearing representative on July 8, 2015. She submitted a January 15, 2015 report from Dr. Karwowski who noted that appellant reported lifting a heavy container of mail at work on July 8, 2014 and experienced immediate left hip pain. Dr. Karwowski treated appellant on July 31 and August 28, 2014 for persistent hip pain after an injection from an orthopedist. She opined that the hip pain may be referred pain from her lumbar spine where an MRI scan revealed lumbar stenosis at L4-5 and a bulging disc at L5-S1. Dr. Karwowski noted that appellant's job required repetitive standing, lifting, and bending, which aggravate her bulging disc and spinal stenosis.

In a decision dated September 17, 2015, an OWCP hearing representative affirmed the decision dated December 8, 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]

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 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 appellant lifted a tub of mail from an all-purpose container on July 8, 2014 when she experienced back, hip, and leg pain. Appellant was diagnosed with lumbar stenosis at L4-5, bulging disc at L5-S1, and degenerative disc disease of the lumbar spine. However, the Board finds that appellant has not submitted sufficient medical evidence to establish that these diagnosed conditions are causally related to specific employment factors. On October 10, 2014 OWCP advised appellant of the type of medical evidence needed to establish her claim.

In the October 28, 2014 report, Dr. Karwowski treated appellant for hip pain. Appellant reported that she lifted a heavy container of mail at work on July 8, 2014 and experienced immediate hip pain. Dr. Karwowski noted an MR1 scan showed spinal stenosis at L4-5 and a bulging disc at L5-S1. She noted that appellant's job required repetitive standing, lifting, and bending, which "likely" aggravated her bulging disc and spinal stenosis. The Board notes that Dr. Karwowski's report provides some support for causal relationship, but at best, this report provides only speculative support for causal relationship as the physician qualifies her support by noting that appellant's employment "likely" caused her condition. Dr. Karwowski provided no medical reasoning to support her opinion on causal relationship. Therefore, this report is insufficient to meet appellant's burden of proof.[5]

Similarly, on January 15, 2015 Dr. Karwowski again noted that appellant reported lifting a heavy container of mail at work on July 8, 2014 and experienced immediate left hip pain. She noted that an MRI scan of appellant's lumbar spine revealed lumbar stenosis at L4-5 and a

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

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

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

[5] Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

bulging disc at L5-S1. Dr. Karwowski noted that her job required repetitive standing, lifting, and bending which aggravated her bulging disc and spinal stenosis. Although she supported causal relationship, she did not provide medical rationale explaining the basis of her conclusory opinion regarding the causal relationship between appellant's lumbar stenosis at L4-5 and a bulging disc at L5-S1 and the factors of employment.[6] Dr. Karwowski did not explain the process by which repetitive standing, lifting, and bending, would aggravate her bulging disc and why such condition would not be due to any nonwork factors such as age-related degenerative disc disease. Therefore, this report is insufficient to meet appellant's burden of proof.

Other reports from Dr. Karwowski are also insufficient to establish the claim as she did not provide a history of injury[7] or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.[8]

Appellant was treated by Dr. Bhagia on October 1, 2014 for chronic low back pain after a work-related injury. She reported to Dr. Bhagia that on July 8, 2014 she was trying to lift a box at work and developed radiating back pain and he noted that a lumbosacral MRI scan showed a broad-based left L5-S1 disc protrusion with caudal extrusion, moderate canal stenosis at L4-5 and moderate facet degenerative changes at L4-5 and L5-S 1 bilaterally. He diagnosed low back pain with radicular symptoms on the left side secondary to S1 radiculopathy on the left side from disc protrusion at L5-S1. However, Dr. Bhagia appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether her condition was work related.[9] To the extent that he is providing his own opinion, Dr. Bhagia failed to provide a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.[10]

On October 1, 2014 Dr. Bhagia sought to clarify the mechanism of injury for appellant's condition. Appellant reported lifting a very heavy tub of mail at work on July 8, 2014 which triggered left-sided back pain radiating down the left leg. An MRI scan of the lumbar spine revealed herniated left L5-S1 disc. Dr. Bhagia opined that it was "more likely than not" that heavy lifting resulted in the disc herniation, which was a common mode of injury for disc herniation. However, he provided no medical reasoning or rationale to support his opinion on causal relationship. Therefore, this report is insufficient to meet appellant's burden of proof.

[6] *See T.M.*, Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[7] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

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

[9] *Supra* note 7.

[10] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

The remainder of the medical evidence is of limited probative value as it fails to provide an opinion on the causal relationship between appellant's job and her diagnosed lumbar condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.[11]

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 July 8, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[11] *See supra* note 8.