United States Department of Labor
Employees' Compensation Appeals Board

S.G., Appellant	)	
and	)	**Docket No. 16-0405**
	)	**Issued: April 19, 2016**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Hampton, GA, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On December 29, 2015 appellant filed a timely appeal from a December 21, 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 an employment-related injury on April 23, 2015.

On appeal appellant asserts that the medical evidence establishes causal relationship.

FACTUAL HISTORY

On April 23, 2015 appellant, then a 44-year-old management and program analyst, filed a traumatic injury claim (Form CA-1) alleging that she felt dizzy, lost her balance, and fell down stairs that day, injuring her right shoulder, arm, and leg.

[1] 5 U.S.C. § 8101 *et seq.*

By letter dated May 14, 2015, OWCP advised appellant that her claim had been previously administratively approved for a limited amount of medical expenses, but that the merits of her claim had not been not formally considered. It informed her of the evidence needed to support her claim.

In an undated statement, appellant related that on April 23, 2015 she was going up a flight of stairs and when, about two stairs from the top, she had a dizzy spell, lost her balance, and fell backwards, hitting her head and landing on her back. Someone coming up the stairs assisted her to her desk where she reported the injury to her supervisor and the air traffic manager. She called her daughters who picked her up and took her to Summit Urgent Care. Appellant also related that on Sunday, April 26, 2015 she had a hard time walking and returned to Summit Urgent Care where she was advised to go to Piedmont Newnan Hospital emergency room for a possible lower extremity blood clot. She related that, at the emergency room, a blood clot was ruled out. Appellant also noted that she had a vomiting episode at work on April 29, 2015 that continued later that day, and that she returned to Summit Urgent Care where a bruised back was diagnosed. She also indicated that she had a long history of migraines and brain lesions and that in March 2015 she was hospitalized for a possible heart attack that was not found, but she was worked up for myasthenia gravis and multiple sclerosis (MS). Appellant also observed that she had a history of dizziness and high blood pressure. She concluded that there was no elevator where she was required to go at work, and that she only hit her head on the floor. Appellant attached two photographs of the staircase.

In a Summit Urgent Care treatment note dated April 23, 2015, Sarah Bence, a physician assistant, noted a history that appellant became dizzy while going up stairs at work, fell, and hit her right hand, possibly on the handrail, and the back of her head. She diagnosed ankle sprain/strain and contusion of hand. On April 26, 2015 Ms. Bence related a history that appellant, who had MS and a recent fall, was seen for a complaint of left lower leg pain. She diagnosed pain in soft tissues and advised that there was a low suspicion of deep vein thrombosis, but that appellant had a history of hormone use, trauma, and more sedentary activity than usual. Ms. Bence recommended workup at an emergency room. On April 29, 2015 Ron Malcolm, a physician assistant at Summit Urgent Care, advised that appellant was there for a recheck, noting that it was her first day back at work, and she had been vomiting due to back pain that radiated into the left hip. He found decreased range of motion, spasms, and tenderness on examination of the back. Mr. Malcolm diagnosed lumbar sprain/strain, hip/pelvis sprain/strain, and nausea with vomiting.

A Piedmont Newnan Hospital emergency department record dated April 26, 2015, signed by Dr. Latonya Hendricks, an osteopath was submitted. Appellant reported that she had a history of MS and had fallen at work several days previously with continued left lower extremity pain. The left posterior calf was tender on examination with full motor strength. A left lower extremity Doppler study was unremarkable with no evidence of either deep or superficial venous thrombosis. A muscle strain of the lower leg and contusion were diagnosed. Appellant was discharged that evening.

By decision dated June 18, 2015, OWCP denied the claim. It found that the claimed event did not occur in the performance of duty and that the medical evidence did not establish that a medical condition was causally related to the claimed work event.

On June 24, 2015 appellant requested a review of the written record by an OWCP hearing representative. She related that she began having a workup for MS in March 2015 and had symptoms since, including dizzy spells and weakness. Appellant advised that she was officially diagnosed with MS on June 18, 2015. She submitted one page of a report dated June 18, 2015 that was unsigned. The report indicated that appellant had an appointment that day with Dr. Gathline Etienne, a Board-certified neurologist, and provided a primary diagnosis of MS and additionally diagnosed chronic daily headache. Appellant also resubmitted the April 23, 26, and 29, 2015 reports from Summit Urgent Care that were cosigned with illegible signatures.

By decision dated December 21, 2015, an OWCP hearing representative affirmed the June 18, 2015 decision, as modified. He found that appellant's fall on the stairs at work occurred in the performance of duty, but that she failed to submit sufficient medical evidence to establish a causal relationship between the fall and the diagnosed conditions.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[2] including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.[3] The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.[4]

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.[5]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[6] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 employee.[7] Neither the mere fact that a disease or condition manifests itself during a period

[2] *J.P.*, 59 ECAB 178 (2007).

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

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

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

[6] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[7] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[8]

Medical opinion, in general, can only be given by a qualified physician.[9] Section 8101(2) of FECA provides that "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.[10] Registered nurses, licensed practical nurses, and physicians' assistants are not "physicians" as defined under the FECA. Their opinions are of no probative value.[11]

ANALYSIS

It is undisputed that the April 23, 2015 work incident occurred as alleged. The Board finds that medical evidence submitted by appellant, however, is insufficient to establish that this incident resulted in an employment injury.

Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically-sound explanation of how the claimed work event caused or aggravated the claimed condition.[12] No physician did so in this case.

A physician assistant is not considered a physician under FECA.[13] The record includes reports from Ms. Bence and Mr. Malcolm, physician assistants, dated April 23 to 29, 2015. As they are not considered physicians as defined under FECA,[14] their reports are of no probative value on the issue of whether appellant sustained an injury causally related to the April 23, 2015 employment incident. Following the June 18, 2015 decision, appellant resubmitted copies of the physician assistant's reports that were cosigned. However, the signatures on these reports were illegible and could not be identified. Appellant also provided a partial one-page report dated June 18, 2015 from an unknown provider. 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 section 8101(2) of FECA,[15] and reports lacking proper identification do not constitute probative medical evidence.[16] The Board finds that this evidence is of no probative medical value and insufficient to establish the claim.

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

[9] *E.K.*, Docket No. 09-1827 (issued April 20, 2010).

[10] 5 U.S.C. § 8101(2); *see Roy L. Humphrey*, 57 ECAB 238 (2005).

[11] *Roy L. Humphrey, id.*

[12] *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

[13] *Roy L. Humphrey*, *supra* note 10.

[14] *Supra* note 10.

[15] 5 U.S.C. § 8101(2).

[16] *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

The April 26, 2015 emergency department report signed by Dr. Hendricks, who diagnosed a muscle strain of the lower leg, did not discuss a cause of the diagnosed condition. This report too is insufficient to establish that appellant sustained a left leg condition causally related to the April 23, 2015 employment incident.[17]

It is appellant's burden to establish that a diagnosed condition is causally related to the April 23, 2015 employment incident. Appellant submitted insufficient medical evidence to establish an injury caused by this incident.

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 employment-related injury on April 23, 2015.

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[17] *See Willie M. Miller*, 53 ECAB 697 (2002) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).