United States Department of Labor
Employees' Compensation Appeals Board

D.Y., Appellant	)	
and	)	**Docket No. 15-1021**
	)	**Issued: August 18, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Denver, CO, 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
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 2, 2015 appellant filed a timely appeal from a December 19, 2014 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 that she sustained a back injury in the performance of duty on July 29, 2014.

FACTUAL HISTORY

On July 31, 2014 appellant, then a 45-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 29, 2014 she injured her back when she bent down and lifted

[1] 5 U.S.C. § 8101 *et seq.*

the top flat tub so she could measure the bottom tub. The claim form did not indicate that appellant stopped work.

Evidence from Concentra Medical Centers was submitted in support of the claim. This included: work activity status reports dated July 29, September 2, 16, 15, and 30, 2014 from Patrick F. Freeman, a physician assistant, which diagnosed lumbar strain; August 18 and 25, and September 2, 11, 17, 19, 23, 25, and 30, and October 2, 7, 9, 14, and 16, 2014 physical therapist notes which diagnosed lumbar strain; letters noting that appellant had missed a scheduled appointment with a physician assistant on August 21 and October 23, 2014; a September 5, 2014 job offer; and requests for medical authorization.

A duty status report containing an illegible signature from Concentra Medical Center dated August 8, 2014 diagnosed lumbar strain.

In October 14 and 30, 2014 reports, Dr. Candice A. Sobanski, a Board-certified emergency medicine physician, diagnosed lumbar strain and opined that appellant could perform modified activity.[2] October 14 and 30, 2014 duty status reports were also submitted.

By letter dated November 13, 2014, OWCP advised appellant that because her medical bills had exceeded $1,500.00, her claim was now being formally adjudicated. It advised her of the deficiencies in her claim and provided her 30 days in which to submit additional factual and medical evidence, which included a medical report signed by a qualified physician which supported how the reported work incident caused or aggravated a medical condition.

In response to its letter, OWCP received a duplicate copy of Dr. Sobanski's October 30, 2014 report. It also received a December 2014 narrative statement from appellant, a November 20, 2014 work activity report, November 20, 2013 progress notes, and a November 20, 2014 duty status report from Dr. Sobanski. Also received were November 24, December 4 and 9, 2014 physical therapist notes.

Appellant explained in her statement received by OWCP on December 8, 2014, that on July 29, 2014, she contended that she was the opening supervisor and therefore she had to count the mail for the routes. She had completed nine routes, removing tubs of mail to the floor. When appellant got to route C035, three tubs were stacked on top of each other. She bent down to lift a tub of mail and felt a sharp pain in her back. Appellant had dull ache that day, but the next day she could not bend and lift without pain. She then reported the injury.

In a December 4, 2014 report and a December 4, 2014 progress note, Dr. Darla Draper, a family practitioner, related that appellant developed lumbar pain on July 29, 2014 while lifting 40- to 50-pound bins of magazines repetitively while at work. She noted that appellant was treated from August 1 through December 4, 2014 and diagnosed lumbar strain. Dr. Draper opined that repetitively lifting 40- to 50-pound bins of magazines caused lumbar back pain and strain.

[2] The reports refer to Dr. Sobanski either as a physician or a physician assistant.

By decision dated December 19, 2014, OWCP found that evidence supports that the injury and/or event(s) occurred as described, but denied the claim as the medical component of fact of injury had not been established.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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, that an injury was sustained while 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.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[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 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.[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

Appellant alleged that she sustained an injury to her back on July 29, 2014 while bending down and lifting tubs of mail on July 29, 2014. OWCP accepted, and the Board agrees, that the claimed incident occurred as alleged. Accordingly, the first component of fact of injury is established. OWCP denied the claim on the basis that the medical component of fact of injury was not established.

[3] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[4] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

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

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

The Board, however, finds that there is medical evidence in the record addressing appellant's employment incident of July 29, 2014 as well as its causal relationship to a diagnosed lumbar strain condition. This includes a series of reports and progress notes from November 20, 2013 through October 30, 2014 from Dr. Sobanski, who diagnosed low back pain and lumbar strain. As well, Dr. Draper, in a report and progress note of December 4, 2013 also described in detail appellant's employment incident of July 29, 2014 of lifting 40- to 50-pound bins of magazines repetitively and reported that appellant was treated from August 1 through December 4, 2014. She diagnosed lumbar strain and provided medical rationale that, repetitively lifting 40- to 50-pound bins of magazines, caused lumbar back pain and strain. Therefore OWCP improperly denied the claim on the basis that the medical component of fact of injury was not established.[8] The Board will therefore set aside the December 19, 2014 decision and remand the case to OWCP to review the medical evidence and issue a *de novo* decision on appellant's entitlement to compensation.

CONCLUSION

The Board finds that this case is not in posture for decision. The weight of the factual evidence establishes that the claimed incident occurred as alleged. OWCP must now determine whether the medical evidence establishes that the incident caused an injury.

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this opinion.[9]

Issued: August 18, 2016
Washington, DC

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

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

[8] *See J.T.*, Docket No. 14-1740 (issued December 11, 2014).

[9] James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.