United States Department of Labor
Employees' Compensation Appeals Board

Z.L., Appellant	)	
and	)	**Docket No. 16-1291**
	)	**Issued: December 2, 2016**
DEPARTMENT OF VETERANS AFFAIRS, HARRY S. TRUMAN MEMORIAL VETERANS HOSPITAL, Columbia, MO, 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 June 2, 2016 appellant filed a timely appeal of a March 11, 2016 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 the case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish that she developed an occupational disease in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

[2] With her request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On December 7, 2015 appellant then a 50-year-old details clerk, filed an occupational disease claim (Form CA-2), alleging that she developed C6-7 cervical stenosis with radiculopathy as a result of constantly twisting her upper body while performing her work duties. She first became aware of her condition on August 4, 2015 and realized that it was related to her employment on October 18, 2015. Appellant did not stop work.

By letter dated January 11, 2016, OWCP advised that the evidence of record was insufficient to establish that she actually experienced the incident alleged to have caused the injury. It also noted that there was no physician's opinion as to how work activities caused or aggravated a medical condition. OWCP provided a questionnaire and asked that appellant specifically describe the employment-related activities that contributed to her condition, how often she performed the activities, and report any activities outside her employment. It also requested the employing establishment provide comments from a knowledgeable supervisor.

Appellant submitted a procedure note for a C7-T1 translaminar epidural steroid injection under fluoroscopic guidance dated December 17, 2015 performed by Candice Langley, a nonspecific healthcare provider, for neck and left upper extremity pain. In a January 4, 2016 employing establishment evaluation note, a nurse advised that appellant presented for a follow up from a December 7, 2015 injury. Appellant had a steroid injection on December 17, 2015 and was referred to an orthopedist for evaluation. The nurse diagnosed C7 neuroforaminal stenosis on the left due to disc bulge at that level with neuropathy.

The employing establishment submitted a statement from Derrick Hensley, chief of patient benefits, dated February 9, 2016, who noted that the employing establishment concurred with appellant's allegations. Mr. Hensley advised that appellant's back was to the door at her workstation which required her to turn 180 degrees to engage with or acknowledge anyone entering her work space. This occurred 10 to 15 times daily during the employee's regularly scheduled tour of duty. He indicated that to minimize the effects of appellant's activities he had appellant's workstation rotated 180 degrees so that she faced the entrance and no longer had to rotate to engage/acknowledge anyone entering her work space and would no longer be startled by people approaching her from behind unannounced.

Dr. Christina L. Goldstein, a Board-certified orthopedist, noted having treated appellant for progressive left arm and neck pain since August 2015. Appellant described the left arm pain as constant electric shock which radiated down to her hand and fingers and was associated with numbness as well as subjective weakness. Dr. Goldstein noted no improvement in appellant's condition with physical therapy or an epidural steroid injection. Findings on examination revealed tenderness to palpation over C5 to C7, tenderness to palpation over the left-sided cervical paraspinals and trapezius muscle, positive left-sided Spurling sign, paresthesias with light touch palpation in the left C5, C6, and C7 distributions, and mild hyperreflexia in the left biceps. She noted a magnetic resonance imaging (MRI) scan of the cervical spine showed loss of cervical lordosis with two level disc desiccation at C5-6 and C6-7, and an eccentric disc bulge at C5-6 with foraminal stenosis at C6-7 with probable exiting C7 nerve compression. Dr. Goldstein indicated that the MRI scan showed disc herniations at both C5-6 and C6-7. She recommended a repeat MRI scan to confirm the presence of her disc herniation at C6-7 as her

symptoms were inconsistent with the diagnostic imaging. Appellant reported that her physicians found a mass in her breast which is currently being investigated.

In a decision dated March 11, 2016, OWCP denied appellant's claim, finding that the evidence of record did not support that the claimed injury or events occurred as alleged. It also found that the medical evidence was insufficient to establish a diagnosed medical condition causally related to factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. Appellant must also establish that such event, incident, or exposure caused an injury.[3]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.[4] To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[5]

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[6] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.[7]

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[3] *See Walter D. Morehead,* 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *S.P.*, 59 ECAB 184, 188 (2007).

[5] *R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

[6] *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

[7] *Betty J. Smith*, 54 ECAB 174 (2002).

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 claimant.[8]

ANALYSIS

OWCP denied appellant's claim, finding that she failed to establish that the events occurred as alleged. In the present case, the evidence supports that appellant's duties as a details clerk involved repetitively twisting her upper body while performing her work duties. There is no dispute that appellant was actually doing the job of a details clerk. Specifically, in a statement from Mr. Hensley, chief of patient benefits, noted that the employing establishment concurred with appellant's allegations. Mr. Hensley advised that appellant's back was to the door at her workstation which required her to turn 180 degrees to engage with or acknowledge anyone entering her work space which occurred 10 to 15 times daily during appellant's regularly scheduled tour of duty. The Board finds that the evidence is undisputed that appellant was performing her work duties as a details clerk which included repetitively twisting her upper body.

The Board further finds, however, that there is no medical evidence in the record at the time of OWCP's March 11, 2016 decision which establishes that those repetitive duties performed around August 4, 2015 caused or aggravated the diagnosed C6-7 cervical stenosis with radiculopathy. On January 11, 2016 OWCP advised appellant of the type of medical evidence needed to establish her claim.

Appellant was treated by Dr. Goldstein for progressive left arm and neck pain with radiculopathy beginning in August 2015. An MRI scan of the cervical spine revealed loss of cervical lordosis with two level disc desiccation at C5-6 and C6-7, disc bulge at C5-6 with left-sided foraminal stenosis and probable exiting C7 nerve compression. Dr. Goldstein noted findings on examination revealed tenderness to palpation over C5 to C7, tenderness over the cervical paraspinals and trapezius muscle, paresthesias in the left C5, C6, and C7 distributions, and mild hyperreflexia in the left biceps. However, this report is insufficient to establish the claim as Dr. Goldstein did not provide a history of injury[9] or specifically address whether appellant's employment activities had caused or aggravated these conditions.[10]

[8] *Solomon Polen*, 51 ECAB 341 (2000).

[9] *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).

[10] *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).

Appellant submitted a December 17, 2015 procedure note for a C7-T1 translaminar epidural steroid injection performed by Ms. Langley, a nonspecific healthcare provider. The Board has held that medical documents not signed by a physician and lacking proper identification do not constitute probative medical evidence and do not establish appellant's claim. Thus, this document is insufficient to establish appellant's claim.[11]

A January 4, 2016 treatment note was also submitted from a nurse. However, the Board has held that notes signed by a nurse are not considered medical evidence as nurses are not considered physicians under FECA.[12] Thus, the treatment records from the nurse are of no probative medical value in establishing appellant's claim.

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 has not met her burden of proof to establish that she developed an occupational disease in the performance of duty.

[11] *See R.M.*, 59 ECAB 690 (2008); *Bradford L. Sullivan*, 33 ECAB 1568 (1982) (where the Board held that 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 FECA).

[12] *See David P. Sawchuk*, 57 ECAB 316. 320 n.11 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the FECA); 5 U.S.C. § 8101(2) (this subsection defines a ''physician'' as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated the March 11, 2016 is affirmed, as modified.

Issued: December 2, 2016
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