United States Department of Labor
Employees' Compensation Appeals Board

A.C., Appellant	)	
and	)	**Docket No. 16-1587**
	)	**Issued: December 27, 2016**
DEPARTMENT OF THE NAVY, FLEET FORCES COMMAND-SHIPYARDS FLEET HRO -- NORFOLK NAVAL SHIPYARD, Portsmouth, VA, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 1, 2016 appellant filed a timely appeal from a March 29, 2016 merit decision of the Office of Workers' Compensation Programs[1] (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 a back injury causally related to the December 16, 2015 employment incident.

[1] The Board notes that appellant submitted additional evidence after OWCP rendered its March 29, 2016 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision and; therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 24, 2016 appellant, then a 35-year-old insulator apprentice, filed a traumatic injury claim (Form CA-1) alleging that on December 16, 2015 she sustained a back injury due to sitting for a long period of time at the TCC campus building, while attending a command training class. She notified her supervisor of the alleged injury on February 24, 2016. Appellant did not stop work. On the reverse side of the form, the employing establishment controverted the claim.

In a December 16, 2015 emergency room report, Dr. Michael E. Stull, Board-certified in emergency medicine, reported that appellant presented to the emergency department with complaints of spontaneous sharp back pain which developed earlier that day. Appellant reported that the pain was exacerbated by deep breathing, ambulating, and sitting in a chair. She further noted a back injury from years ago, but denied any recent back injuries. Dr. Stull provided findings on physical examination and noted development of a tactile fever with no source. He opined that her condition was likely a muscle strain or viral infection which was permeating in the community. Appellant was released to go home.

By report dated December 16, 2015, Dr. Kip K. Park, a Board-certified radiologist, reported that a chest x-ray revealed no acute findings.

In a January 29, 2016 statement, appellant explained that she reported to a command training class on December 16, 2015. She noticed a sharp pain in her back during her first class which progressively worsened as she sat through her classes, causing her to seek emergency medical treatment.

By letter dated February 25, 2016, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the factual and medical evidence needed and was afforded 30 days to submit the additional evidence.

In a December 16, 2015 supplemental statement, appellant reported that she did not feel any pops or twists in her back other than lifting her backpack. She noted that she had previously been in a car accident in June 2007 where she was hit from behind. During that incident, appellant was pregnant so treatment for her back did not begin until after she delivered her child in September 2007.

By report dated December 17, 2015, Dr. Michelle Shippert, an osteopathic physician, reported appellant's complaints of pin and needle pain in the right middle thoracic area which progressively worsened, causing her to seek emergency treatment for back pain. Appellant informed her that she had visited a chiropractor that day who "fixed it" and her tender point was gone. She requested clearance to return to work explaining that she was capable of full duty. Dr. Shippert provided findings on examination and diagnosed right-sided thoracic back pain.

In a December 17, 2015 report, Dr. M. Scott Nible, a treating chiropractor, reported that appellant complained of pain in the muscles of the lumbar spine. He diagnosed sciatica unspecified site, contracture of muscle unspecified site, and segmental and somatic dysfunction of lumbar region.

By decision dated March 29, 2016, OWCP denied appellant's claim finding that the evidence of record failed to establish that her diagnosed condition was causally related to the accepted December 16, 2015 employment incident.

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 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]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[5] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such a causal relationship.[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 claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[7]

ANALYSIS

OWCP accepted that the December 16, 2015 employment incident occurred as alleged. The issue is whether appellant established that the incident caused a back injury. The Board

[3] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Elaine Pendleton*, *supra* note 3.

[6] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[7] *James Mack*, 43 ECAB 321 (1991).

finds that she failed to submit sufficient medical evidence to support a back injury causally related to the accepted employment incident.[8]

On the date of injury, appellant sought emergency medical treatment with Dr. Stull. In his December 16, 2015 report, Dr. Stull reported that appellant presented to the emergency department with complaints of spontaneous sharp back pain which developed earlier that day. He noted the development of a tactile fever with no source. Dr. Stull opined that appellant's condition was likely a muscle strain or a viral infection which was permeating in the community.

The Board finds that the opinion of Dr. Stull is not well rationalized. Dr. Stull failed to provide a firm medical diagnosis and generally concluded that the condition was likely a muscle strain or viral infection. He failed to provide any explanation or medical rationale regarding how physiologically the movements involved in the employment incident caused or contributed to a diagnosed condition. Moreover, Dr. Stull noted a preexisting back injury, but failed to provide an adequate and detailed medical history addressing why appellant's complaints were not caused by her preexisting condition.[9] A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.[10] Thus, Dr. Stull's medical report does not constitute probative medical evidence because he failed to provide a clear diagnosis and did not adequately explain the cause of appellant's condition.[11]

In a December 17, 2015 medical report, Dr. Shippert noted complaints of pins/needles in the right middle thoracic area which progressively worsened, causing appellant to seek emergency treatment for back pain. He provided findings on examination and diagnosed right-sided thoracic back pain. The Board notes that Dr. Shippert failed to provide a firm medical diagnosis other than thoracic back pain. It is not possible to establish the cause of a medical condition if the physician has not provided a diagnosis, but only notes pain.[12] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis.[13]

In a December 17, 2015 chiropractic report, Dr. Nible reported that appellant complained of pain in the muscles of the lumbar spine. He diagnosed sciatica unspecified site, contracture of muscle unspecified site, and segmental and somatic dysfunction of her lumbar region. In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under 5 U.S.C. § 8101(2). A chiropractor is not considered a physician under FECA unless it is established that there is a spinal subluxation as

[8] *See Robert Broome*, 55 ECAB 339 (2004).

[9] *R.E.*, Docket No. 14-868 (issued September 24, 2014).

[10] The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship. *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[11] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[12] *See B.P.*, Docket No. 12-1345 (issued November 13, 2012) (regarding pain); *C.F.*, Docket No. 08-1102 (issued October 10, 2008) (regarding pain); *J.S.*, Docket No. 07-881 (issued August 1, 2007) (regarding spasm).

[13] *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

demonstrated by x-ray to exist.[14] Dr. Nible did not diagnose subluxation based on the results of an x-ray.[15] Therefore, his report does not constitute probative medical evidence as he does not meet the statutory definition of physician.[16]

The only other medical evidence of record was Dr. Park's December 16, 2015 diagnostic report which noted that a chest x-ray revealed no acute findings. As Dr. Park provided findings that appellant's diagnostic testing were normal, his report provides no support for an injury and is insufficient to establish a firm medical diagnosis.[17] Moreover, without any mention of the December 16, 2015 employment incident, any findings made could not be related to appellant's claim to establish causal relationship.[18]

On appeal appellant argues that her injury was work related, but that belief, however sincerely held, does not constitute the medical evidence necessary to establish a firm medical diagnosis and causal relationship. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[19] An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[20]

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the December 16, 2015 employment incident and her injury. Thus, the Board finds that appellant has failed to meet her burden of proof.

Appellant may submit this additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish a back injury causally related to the December 16, 2015 employment incident.

[14] *See Kathryn Haggerty*, 45 ECAB 383 (1994).

[15] 5 U.S.C. § 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term 'physician' includes chiropractors, only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[16] *Id.*

[17] *J.P.*, Docket No. 14-87 (issued March 14, 2014).

[18] *S.Y.*, Docket No. 11-1816 (issued March 16, 2012).

[19] *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[20] *D.D.*, 57 ECAB 734 (2006).

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 27, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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