United States Department of Labor
Employees' Compensation Appeals Board

S.A., Appellant	)	
and	)	**Docket No. 16-0073**
	)	**Issued: February 2, 2016**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Chicago, IL, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 16, 2015 appellant filed a timely appeal from a September 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 injury causally related to a March 8, 2014 employment incident.

FACTUAL HISTORY

On March 19, 2014 appellant, a 29-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that she sustained a back injury on March 8, 2014

[1] 5 U.S.C. § 8101 *et seq.*

while in the performance of duty. She stated that she was checking a bag and injured her back while lifting it from the rollers to the screening table. The employing establishment did not indicate that appellant stopped work.

Appellant submitted a prescription dated March 14, 2014 referring her to physical therapy for a diagnosis of back pain and physical therapy notes dated March 24 through May 15, 2014 from Melissa Strzelinski, a physical therapist, who diagnosed lower back pain from a work-related injury.

In a June 4, 2014 letter, OWCP indicated that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay (COP) or challenge the case, payment of a limited amount of medical expenses was administratively approved. It stated that it had reopened the claim for consideration because the medical bills had exceeded $1,500.00. OWCP requested additional evidence and afforded appellant 30 days to respond to its inquiries.

Appellant submitted a narrative statement dated June 20, 2014 reiterating the factual history of her claim and a March 14, 2014 report from Dr. Elyse Esrig, a Board-certified internist, who diagnosed low back pain. Dr. Esrig asserted that appellant was lifting a bag at work when she felt a pop and experienced back pain the next morning. Appellant also submitted a normal x-ray of the lumbar spine dated March 18, 2014 and an x-ray of the thoracic spine dated March 18, 2014 which revealed mild right scoliosis.

By decision dated July 18, 2014, OWCP denied appellant's claim because the medical evidence submitted failed to establish a diagnosed condition causally related to the March 8, 2014 employment incident.

On June 24, 2015 appellant requested reconsideration and submitted a June 11, 2015 report from Dr. Esrig who reiterated her diagnosis of low back pain. Dr. Esrig explained that appellant's back pain diagnosis "existed and what she did at work," was caused by "lifting a heavy bag at work." She pointed out that the strain could have been "muscular, facet joint, disc, or other."

By decision dated September 21, 2015, OWCP denied modification of its prior decision.

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 timely filed within the applicable time limitation period of FECA, that an injury[2] was sustained in the performance of duty, as alleged,

[2] OWCP regulations 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. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. 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 sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.[4]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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.[5]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury causally related to a March 8, 2014 employment incident.

OWCP has accepted that the employment incident of March 8, 2014 occurred at the time, place, and in the manner alleged. The issue is whether appellant sustained an injury as a result. The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury related to the March 8, 2014 employment incident.

In her reports, Dr. Esrig diagnosed low back pain. She explained that appellant's back pain diagnosis was caused by lifting a bag at work and the strain could have been "muscular, facet joint, disc, or other." The Board finds that Dr. Esrig's diagnosis of low back pain is a description of a symptom rather than a clear diagnosis of the medical condition.[6] The Board further finds that Dr. Esrig's indication of a "muscular, facet joint, disc, or other" type of strain is not a firm diagnosis. Therefore, the reports from Dr. Esrig are insufficient to establish a medical diagnosis in connection with the injury.

[3] *See T.H.*, 59 ECAB 388 (2008). *See also Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Id. See Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

[5] *Id. See Gary J. Watling*, 52 ECAB 278 (2001).

[6] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

Other medical evidence submitted by appellant, such as the March 18, 2014 x-rays, are of limited probative value as they do not address whether appellant's employment caused a diagnosed condition.[7]

Appellant also provided physical therapy notes dated March 24 through May 15, 2014 from Ms. Strzelinski, a physical therapist, who diagnosed lower back pain from a work-related injury. These documents do not constitute competent medical evidence as they are not from a physician.[8]

For these reasons, the Board finds that appellant did not meet her burden of proof to establish that she has a diagnosed medical condition causally related to the March 8, 2014 work 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 has not met her burden of proof to establish an injury causally related to a March 8, 2014 employment incident.

[7] *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

[8] *A.C.*, Docket No. 08-1453 (issued November 18, 2008) (records from a physical therapist do not constitute competent medical opinion in support of causal relation; a physical therapist is not a physician as defined under FECA). *See* 5 U.S.C. § 8101(2). This subsection defines the term "physician." *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

ORDER

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

Issued: February 2, 2016
Washington, DC

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

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

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