United States Department of Labor
Employees' Compensation Appeals Board

M.R., Appellant	)	
and	)	**Docket No. 15-1181**
	)	**Issued: January 19, 2016**
DEPARTMENT OF AGRICULTURE, ANIMAL & PLANT HEALTH INSPECTION SERVICE, Newnan, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 4, 2015 appellant filed a timely appeal from February 3 and March 19, 2015 merit decisions and an April 16, 2015 nonmerit 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.[2]

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish additional medical conditions due to her July 25, 2014 employment injury; (2) whether appellant met her

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant filed a timely request for oral argument, pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion the Board, by an October 9, 2015 order, denied appellant's request for an oral argument before the Board, noting that her arguments on appeal could be adequately addressed in a Board decision based on a review of the case record as submitted. *Order Denying Request for Oral Argument*, Docket No. 15-1181 (issued October 9, 2015).

burden of proof to establish disability due to her employment injury on December 12 and 23, 2014; and (3) whether OWCP properly denied appellant's request for a hearing as untimely filed.

FACTUAL HISTORY

On July 25, 2014 appellant, then a 39-year-old animal caretaker, filed a traumatic injury claim (Form CA-1) alleging that while at work on July 25, 2014 she sustained a lower back injury when she tried to hold back a dog she was walking from lunging at another dog approaching from the opposite direction. OWCP accepted her claim for a lumbar sprain. Appellant received wage-loss compensation on the daily rolls beginning September 15, 2014 for periods she was off work.[3]

A November 5, 2014 magnetic resonance imaging (MRI) scan report of appellant's lumbar spine contained findings describing a moderate disc bulge at L4-5 with a mild degree of spinal stenosis and mild disc bulges at L3-4 and L5-S1. The impression portion of the report indicated "[d]egenerative changes as described" and "[m]ild spinal stenosis at L4-5."

On November 12, 2014 OWCP received a request, signed by Dr. Michael A. McHenry, an attending Board-certified orthopedic surgeon, for authorization of facet joint injections at L4-5 and L5-S1 to treat lumbosacral spondylosis without myelopathy and displacement of cervical intervertebral without myelopathy.

In a December 11, 2014 letter, OWCP advised appellant that she had not submitted medical evidence supporting authorization of facet joint injections at L4-5 and L5-S1. It noted that the July 25, 2014 employment injury had not been accepted for lumbosacral spondylosis without myelopathy or displacement of cervical intervertebral without myelopathy, and that the medical evidence did not explain how the requested treatment was necessitated by the accepted lumbar sprain. OWCP requested that appellant submit medical evidence supporting her request for treatment authorization within 30 days of the date of its December 11, 2014 letter.

In a December 12, 2014 report, Dr. McHenry described his administration on that date of facet joint injections at L4-5 and L5-S1. He noted that a recent MRI scan demonstrated disc bulges at L3-4, L4-5, and L5-S1 and facet arthroscopy, and indicated that appellant complained of a recent flare-up of low back pain. Dr. McHenry diagnosed lumbosacral spondylosis without myelopathy.[4] In a December 12, 2014 note, he indicated, "Please excuse [appellant] from work today. She is able to return on December 13, 2014."

On December 17, 2014 OWCP received a claim for compensation (Form CA-7) in which appellant claimed wage-loss compensation due to time lost from work to obtain medical care on December 12, 2014. Appellant claimed eight hours of leave without pay (LWOP) for that date.

By letter dated December 23, 2014, OWCP requested that appellant submit medical evidence supporting her claim for eight hours of LWOP on December 12, 2014. It noted that her

[3] Appellant stopped work on July 25, 2014 and later returned to light-duty work for the employing establishment.

[4] Dr. McHenry noted, "She has evidence of a lumbar strain from a work event on August 1, 2014."

claim had only been accepted for a lumbar sprain and provided her 30 days to submit the requested evidence.

Appellant submitted a December 23, 2014 report in which Dr. McHenry described his administration on that date of facet joint injections at L3, L4, and L5. Dr. McHenry again discussed the findings of a recent MRI scan, noted that appellant complained of a recent flare-up of low back pain, and diagnosed lumbosacral spondylosis without myelopathy. In a December 23, 2014 note, he indicated, "Please excuse [appellant] from work today (December 23, 2014) as she was seen in our office."

On January 5, 2015 OWCP received a Form CA-7 in which appellant claimed wage-loss compensation due to time lost from work to obtain medical care on December 23, 2014. Appellant claimed eight hours of LWOP for that date.

By letter dated January 13, 2015, OWCP again requested supporting evidence for wage-loss compensation for eight hours of LWOP on December 23, 2014.

In a February 3, 2015 decision, OWCP denied appellant's claim for eight hours of wage-loss compensation on December 12, 2014 for medical treatment received on that date. It found that the medical evidence of record failed to establish that she received treatment for her accepted July 25, 2014 lumbar sprain on that date.

Appellant submitted a January 23, 2015 report in which Dr. Douglas B. Kasow, an attending osteopath and Board-certified orthopedic surgeon, reported the findings of his physical examination on that date. Dr. Kasow diagnosed lumbar sprain, low back pain, lumbosacral spondylosis without myelopathy, and spinal stenosis of lumbar region. He recommended decompression surgery to address appellant's spinal stenosis and degenerative disc disease at L5-S1.

In a February 2, 2015 letter, Dr. McHenry referenced appellant's July 25, 2014 injury and noted that at the initial visit on August 4, 2014 she was evaluated and treated "using the work-related condition as lumbar sprain 846.0." He indicated that she was sent to physical therapy for core strengthening, stretching, and gait training and a lumbar spine MRI scan was completed on November 5, 2014. Dr. McHenry noted, "After reading the MRI [scan] results, it was apparent that [appellant] had sustained more than a lumber strain which was originally her diagnosis. I would like this case to be expanded to include code 721.3 lumbosacral spondylosis without myelopathy."

OWCP received a request for oral hearing on March 16, 2015, which was in connection with OWCP's February 3, 2015 decision.

In a March 19, 2015 decision, OWCP found that appellant had failed to establish additional medical conditions due to her July 25, 2014 employment injury. It explained that the medical evidence of record did not contain a rationalized medical opinion establishing that she sustained a medical condition other than the accepted lumbar sprain due to the July 25, 2014 employment incident. The evidence did not provide sufficient rationale to accept additional diagnosed conditions, including lumbosacral spondylosis without myelopathy, as related to the original July 25, 2014 employment incident.

In another March 19, 2015 decision, OWCP denied appellant's claim for eight hours of wage-loss compensation on December 23, 2014 for medical treatment received on that date. It found that the medical evidence of record did not contain an opinion showing that she received treatment for her accepted July 25, 2014 lumbar sprain on that date.

In an April 16, 2015 decision, OWCP denied appellant's request for a hearing with an OWCP hearing representative. It found that her request was untimely as it was not filed within 30 days of the issuance of its February 3, 2015 merit decision. OWCP indicated that appellant's request for a hearing in connection with the February 3, 2015 decision was postmarked March 12, 2015. It noted that, in its discretion, it had carefully considered her request and had determined that the issue of the case could equally well be addressed by requesting reconsideration and submitting additional medical evidence.

LEGAL PRECEDENT -- ISSUE 1

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[5]

Causal relationship is a medical issue that must be established by rationalized medical opinion evidence.[6] 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.[7] 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.[8]

ANALYSIS -- ISSUE 1

OWCP accepted that on July 25, 2014 appellant sustained a lumbar sprain when she tried to hold back a dog she was walking from lunging at another dog. She later claimed that she sustained a more serious medical condition on July 25, 2014 than the accepted lumbar sprain, specifically she claimed that she sustained lumbosacral spondylosis without myelopathy. The Board finds that appellant did not meet her burden of proof to establish additional medical conditions due to her July 25, 2014 employment injury.

[5] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[6] *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

[7] *Leslie C. Moore*, 52 ECAB 132 (2000).

[8] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

In a February 2, 2015 letter, Dr. McHenry, an attending Board-certified orthopedic surgeon, referenced appellant's July 25, 2014 employment injury and noted that, at the initial visit on August 4, 2014, appellant was evaluated and treated "using the work-related condition as lumbar sprain 846.0." He indicated that she underwent a lumbar spine MRI scan on November 5, 2014 and noted, "After reading the MRI [scan] results, it was apparent that she had sustained more than a lumbar strain which was originally her diagnosis. I would like this case to be expanded to include code 721.3 lumbosacral spondylosis without myelopathy."

The submission of this letter does not establish appellant's claim for additional medical conditions due to her July 25, 2014 employment injury. Dr. McHenry did not provide any medical rationale in support of his conclusion that she sustained lumbosacral spondylosis without myelopathy due to the July 25, 2014 employment injury. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[9] Dr. McHenry did not describe the July 25, 2014 employment incident in any detail or explain how it could have been competent to cause the condition of lumbosacral spondylosis without myelopathy. Such medical rationale is particularly necessary because the November 2014 MRI scan showed degenerative changes in the discs of appellant's lumbar spine. There is no medical evidence of record showing that these degenerative changes were related to employment factors. Dr. McHenry produced other reports containing diagnosed conditions such as lumbosacral spondylosis without myelopathy and displacement of cervical intervertebral without myelopathy, but these reports do not contain a rationalized medical opinion relating these conditions to the July 25, 2014 employment injury.

In a January 23, 2015 report, Dr. Kasow, an attending osteopath and Board-certified orthopedic surgeon, reported physical examination findings and diagnosed lumbar sprain, low back pain, lumbosacral spondylosis without myelopathy, and spinal stenosis of lumbar region. He recommended decompression surgery to address appellant's spinal stenosis and degenerative disc disease at L5-S1. This report is also of limited probative value regarding appellant's claim for additional medical conditions due to the July 25, 2014 employment injury because Dr. Kasow failed to provide any opinion on the cause of these conditions. The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[10]

On appeal, appellant asserts that the medical evidence of record showed she sustained a more serious injury on July 25, 2014 than a lumbar sprain. The Board finds that she has not met her burden of proof to establish any additional medical conditions in her claim.

LEGAL PRECEDENT -- ISSUE 2

For each period of disability claimed, the employee has the burden of proving that she was disabled for work as a result of the accepted employment injury.[11] As used in FECA, the

[9] *C.M.*, Docket No. 14-88 (issued April 18, 2014).

[10] *See Charles H. Tomaszewski*, 39 ECAB 461 (1988).

[11] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[12] Whether a particular injury caused an employee disability from employment is a medical issue, which must be resolved by competent medical evidence.[13]

With respect to claimed disability for medical treatment, section 8103 of FECA provides for medical expenses, along with transportation and other expenses incidental to securing medical care, for injuries.[14] Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.[15] However, OWCP's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof, which includes the necessity to submit supporting rationalized medical evidence.[16]

OWCP's procedures provide that wages lost for compensable medical examination or treatment may be reimbursed. It notes that a claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location.[17] As a rule, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments. Longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.[18]

ANALYSIS -- ISSUE 2

On December 17, 2014 OWCP received a claim for compensation (Form CA-7) in which appellant claimed wage-loss compensation due to time lost from work to obtain medical care on December 12, 2014. Appellant claimed eight hours of LWOP for that date. On January 5, 2015 OWCP received a Form CA-7 in which she claimed wage-loss compensation due to time lost from work to obtain medical care on December 23, 2014. Appellant claimed eight hours of LWOP for that date.

[12] *See Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[13] *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

[14] 5 U.S.C. § 8103(a).

[15] *Vincent E. Washington*, 40 ECAB 1242 (1989).

[16] *Dorothy J. Bell*, 47 ECAB 624 (1996).

[17] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19 (February 2013). *See also Daniel Hollars*, 51 ECAB 355 (2000).

[18] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

The Board finds that appellant failed to establish that she obtained medical care on those dates for her accepted July 25, 2014 employment injury, a lumbar sprain.

In a December 12, 2014 report, Dr. McHenry described his administration on that date of facet joint injections at L4-5 and L5-S1. He noted that a recent MRI scan demonstrated disc bulges at L3-4, L4-5, and L5-S1 and facet arthroscopy, and indicated that appellant complained of a recent flare-up of low back pain. Dr. McHenry diagnosed lumbosacral spondylosis without myelopathy.[19] In a December 23, 2014 report, he described his administration on that date of facet joint injections at L3, L4, and L5. Dr. McHenry again discussed the findings of a recent MRI scan, noted that appellant complained of a recent flare-up of low back pain, and diagnosed lumbosacral spondylosis without myelopathy.[20]

The submission of these reports does not establish appellant's claim for wage-loss compensation for December 12 and 23, 2014. Dr. McHenry indicated that he was providing treatment, including facet joint injections between L3 and S1, for the condition of lumbosacral spondylosis without myelopathy. However, for the reasons explained above, it has not been accepted that appellant sustained lumbosacral spondylosis without myelopathy, or any condition other than lumbar sprain, on July 25, 2014. Dr. McHenry did not provide a rationalized medical opinion that his medical treatment on December 12 and 23, 2014 was for the accepted condition of lumbar sprain.[21] Because appellant did not demonstrate treatment for an accepted employment condition on December 12 and 23, 2014, she has not met her burden of proof to establish wage-loss compensation on those dates.[22]

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.

LEGAL PRECEDENT -- ISSUE 3

Section 8124(b)(1) of FECA, concerning a claimant's entitlement to a hearing before an OWCP representative, provides in pertinent part: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his or her claim before a representative of the Secretary."[23] As section 8124(b)(1) is unequivocal in setting

[19] In a December 12, 2014 note, Dr. McHenry indicated, "Please excuse [appellant] from work today. She is able to return on December 13, 2014."

[20] In a December 23, 2014 note, Dr. McHenry indicated, "Please excuse [appellant] from work today (December 23, 2014) as she was seen in our office."

[21] Dr. McHenry noted in both reports, "She has evidence of a lumbar strain from a work event on August 1, 2014." In addition to the fact that he misidentified appellant's date of injury, Dr. McHenry did not provide an opinion that his medical treatment on December 12 and 23, 2014 was for the accepted condition of lumbar sprain.

[22] *See supra* notes 11 through 18.

[23] 5 U.S.C. § 8124(b)(1).

forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.[24] The date of filing is fixed by postmark or other carrier's date marking.[25]

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.[26] Specifically, the Board has held that OWCP has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to FECA which provided the right to a hearing,[27] when the request is made after the 30-day period for requesting a hearing,[28] and when the request is for a second hearing on the same issue.[29]

ANALYSIS -- ISSUE 3

In the present case, appellant's hearing request was postmarked March 12, 2015 and therefore was made more than 30 days after the date of issuance of OWCP's prior decision dated February 3, 2015 and, thus, she was not entitled to a hearing as a matter of right.[30] Hence, OWCP was correct in finding in its April 16, 2015 decision that she was not entitled to a hearing as a matter of right because her hearing request was not made within 30 days of OWCP's February 3, 2015 decision.

While OWCP also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, OWCP, in its April 16, 2015 decision, properly exercised its discretion by indicating that it had carefully considered appellant's request and had determined that the issue of the case could equally well be addressed by requesting reconsideration and submitting additional medical evidence. The Board has held that as the only limitation on OWCP's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.[31] In the present case, the evidence of record does not indicate that OWCP committed any act in connection with its denial of appellant's hearing request which could be found to be an abuse of discretion.

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[24] *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

[25] *See* 20 C.F.R. § 10.616(a).

[26] *Henry Moreno*, 39 ECAB 475, 482 (1988).

[27] *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

[28] *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

[29] *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

[30] In its February 3, 2015 decision, OWCP denied appellant's claim for wage-loss compensation for December 12, 2014.

[31] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish additional medical conditions due to her July 25, 2014 employment injury or to establish disability due to her employment injury on December 12 and 23, 2014. The Board further finds that OWCP properly denied her request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the April 16, March 19, and February 3, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 19, 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