United States Department of Labor
Employees' Compensation Appeals Board

T.L., Appellant	)	
and	)	**Docket No. 15-1958**
	)	**Issued: January 28, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Sierra Vista, AZ, 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 September 25, 2015 appellant filed a timely appeal of a May 20, 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 to consider the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a low back injury causally related to the accepted January 2, 2015 employment incident.

FACTUAL HISTORY

On January 22, 2015 appellant, then a 24-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on January 2, 2015 she sustained an injury to her low back while working when she retrieved a parcel which weighed less than two pounds from a piece of postal equipment and felt pain in her low back, felt light-headed, and "lost mobility and

[1] 5 U.S.C. § 8101 *et seq.*

control" of her body. She included with her claim form a coworker's statement which repeated appellant's description of the occurrence and reported that the coworker drove appellant to the hospital. The postmaster noted in the supervisor's portion of the claim form that appellant had first sought treatment on January 2, 2015. The claim noted that appellant worked Saturday only and included a checked box to indicate that she had no lost time from work.

OWCP administratively approved appellant's claim without a formal consideration of the merits. Appellant's claim had resulted in no lost time, or minimal lost time, and the employing establishment did not controvert continuation of pay benefits or limited medical benefits.

On January 2, 2015 appellant was treated at the Sierra Vista Regional Health Center. In a hospital report of that date, Dr. Warren Gluck, Board-certified in emergency medicine, noted that she suffered moderate low back pain with acute onset that day when she lifted a package at work. The pain was noted to increase with movement and was localized over the sacrum. Appellant denied bladder or bowel incontinence, paresthesia, or paresis. After taking a history and conducting a physical examination, Dr. Gluck provided pain management with medication. No other procedures were performed. Appellant was discharged in good condition with instructions to follow up with her personal physician if her symptoms did not resolve.

Dr. Gluck completed an attending physician's report (Form CA-20) dated January 2, 2015 and diagnosed appellant with muscle spasm and severe tenderness in her low back. He determined that she suffered a back strain due to lifting a package at work and referred her for physical therapy. Dr. Gluck limited appellant's lifting to no more than 5 pounds for the first week after her treatment and no more than 20 pounds for the next three weeks. He did not keep her off work.

On January 5, 2015 Dr. Ashley Price, Board-certified in family medicine, prescribed physical therapy for appellant.

The record also contains three subsequent duty status reports (Form CA-17) completed and signed by Dr. Price. The first duty status report dated January 23, 2015 diagnosed back strain and restricted appellant's climbing, bending, kneeling, stooping, twisting, pulling or pushing, reaching above the shoulder, and driving a vehicle. It also referred her for physical therapy. A subsequent duty status report dated February 27, 2015 provided the same diagnosis of back sprain, noted that appellant's restrictions are similar to the prior status report, and noted that her physical therapy started on February 26, 2015. Finally, a duty status report dated March 26, 2015 noted muscle spasm in her right lumbar region, mentioned her right thoracic region, and referenced her ongoing physical therapy. All three duty status form reports have a box checked by the physician to indicate that appellant had been advised not to return to work and another box checked to indicate that she could perform her regular work duties with restrictions.

On January 28, 2015 appellant was offered a light-duty assignment as a 204B Supervisor of Customer Service working eight hours on Sundays. She accepted the offered employment and commenced working in the position on February 1, 2015. Appellant's duties consisted of monitoring Sunday mail delivery, reviewing reports, and assigning carriers. The assignment met her medical restrictions and allowed her to sit an average of one hour a day and write an average of two hours a day.

Appellant had a radiologic study on February 6, 2015. A report by Dr. Moises Margolis[2] found narrowing of the disc spaces at the L4-5 and L5-S1 levels of her spine. Dr. Margolis suggested that the narrowing might be a result of degenerative disc disease. He found the rest of appellant's lumbar spine within normal limits.

Handwritten physical therapy notes for the period March and April 2015 document appellant's back symptoms and the treatment provided. Her pain appears to have waxed and waned during the period of physical therapy, but she was never pain free.

By letter dated April 9, 2015, OWCP informed appellant that the case had originally been handled as a minor injury with minimal or no lost time. As the medical expenses had exceeded a $1,500.00, it explained that it was reopening the claim for a determination on the merits. The letter listed the information already in file and identified the evidence she needed to provide to complete her claim. The letter specifically requested a narrative report from appellant's attending physician. Appellant was afforded 30 days to submit the requested information.

In response to OWCP's development letter, appellant submitted additional evidence. She provided both her own undated statement and a duplicate copy of the statement provided by her coworker, which was initially included with her claim for compensation. Appellant also provided a copy of the previously referenced February 6, 2015 radiology report of Dr. Margolis and additional physical therapy notes dating from April 1 to 29, 2015. The record also reflects other physical therapy notes received by OWCP.

By decision dated May 20, 2015, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to show a causal connection between the accepted employment incident and her claimed medical condition. It noted that the medical reports signed by her treating physician do not state that her medical condition was caused by the work activities as she described.

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 was sustained 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

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

[2] The professional qualifications and specialty certifications of Dr. Margolis, were not available.

[3] *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

employment incident or exposure, which is alleged to have occurred.[4] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[5] The medical evidence required to establish causal relationship is usually rationalized medical 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.[6]

ANALYSIS

There is no dispute that on January 2, 2015 the alleged incident of retrieving a parcel weighing less than two pounds from a piece of postal equipment occurred. The Board finds, however, that appellant did not submit sufficient medical evidence to establish that she sustained a diagnosed medical condition causally related to this incident.

Dr. Gluck, Dr. Price, and Dr. Margolis each qualify as a physician,[7] able to offer a probative opinion on whether appellant's diagnosed back strain was causally related to the accepted employment incident on January 2, 2015. However, none of the physicians offered a rationalized opinion, based on examination findings, with a complete medical and factual background, explaining how or why lifting a package weighing approximately two pounds and tossing it to a different location caused her back strain.

Dr. Gluck did not offer an opinion on causal connection in his treatment notes. In an attending physician's report (Form CA-17), he noted that appellant "injured back lifting package at work." Although Dr. Gluck provided a generalized history as related by appellant, he did not provide a rationalized opinion as to the cause of her condition. The Board has held that a report without an opinion as to causal relationship is of little probative value.[8]

The three handwritten reports by Dr. Price represent a follow up on appellant's condition and the progress of her physical therapy treatment. However, they did not contain a rationalized opinion on the issue of causal connection between the accepted work incident and her back sprain. The report of Dr. Margolis is merely an interpretation of radiographic testing and offers no opinion on causal relationship. He mentioned in passing that appellant's narrowed lumbar disc spaces may be a sign of degenerative disc disease.

[4] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[5] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

[6] *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

[7] 5 U.S.C. § 8101(2), *D.R.*, Docket No. 15-0026 (issued February 9, 2015). (The Board explained that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

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

The physical therapy notes included in the record are also insufficient to meet appellant's burden of proof on the issue of causation. The physical therapy notes are not relevant evidence because they are not the opinions of a physician.[9] Consequently, the Board finds that appellant has submitted insufficient medical evidence to meet her burden of proof to establish her 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 failed to meet her burden of proof to establish a low back injury causally related to the accepted January 2, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 28, 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

[9] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under 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).