United States Department of Labor
Employees' Compensation Appeals Board

T.J., Appellant	)	
and	)	**Docket No. 16-0325**
	)	**Issued: June 22, 2016**
U.S., POSTAL SERVICE, POST OFFICE, Baltimore, MD, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
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 December 9, 2015 appellant, through counsel, filed a timely appeal from a June 15, 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 left shoulder, arm, hip, back, leg, knee, and ankle injuries causally related to the accepted April 30, 2014 employment incident.

FACTUAL HISTORY

On May 3, 2014 appellant, then a 32-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 30, 2014 her knee gave out while walking down steps

[1] 5 U.S.C. § 8101 *et seq.*

causing her to fall down three to four steps and land on the left side of her body. She reported that she injured the entire left side of her body including her shoulder, arm, hip, back, leg, knee, and ankle. Appellant stopped work and first received medical care on April 30, 2014, the date of injury.

St. Joseph Medical Center Hospital reports were submitted noting appellant's treatment on April 30, 2014. Marcus E. Dana, a registered nurse (RN), reported that appellant fell down cement steps causing her to fall on her left side. Appellant complained of pain on her left side, back, and left shoulder. Nurse Dana provided discharge instructions and diagnosed back strain, contusion, and arm strain.

In an April 30, 2014 diagnostic report, Dr. Warren David McNeely, a Board-certified diagnostic radiologist, reported that an x-ray of the left shoulder revealed no bony or joint abnormality.

In a May 5, 2014 return to work note, Dr. Bindu Noor, Board-certified in internal medicine, reported that appellant was under her care and was restricted from working. He reported in a May 7, 2014 clinical note that appellant had a fall and her symptoms began on April 30, 2014. Appellant reported that it was raining at work when she was going down steps and her ankle gave way, causing her to fall on her left side. She complained of pain in the left shoulder, hip, and ankle. Dr. Noor diagnosed back pain, left ankle pain, painful shoulder, and obesity.

In return to work notes dated May 14 and 20, 2014, Dr. Noor restricted appellant from working. She noted an April 30, 2014 date of injury and reported that appellant was treated for severe strain, inflammation, and pain of her left arm, back, hip, and ankle. Appellant was referred to physical therapy and restricted to bedrest.

In a May 19, 2014 note and duty status report (Form CA-17), Dr. Shane Nassirpour, a treating chiropractor, reported an April 30, 2014 date of accident and diagnosed lumbar sprain/strain, left hip sprain/strain, left shoulder sprain/strain, left ankle sprain/strain, and muscle spasms. He restricted appellant from returning to work. In a June 6, 2014 Form CA-17, Dr. Nassirpour provided appellant work restrictions and advised that she could resume work on June 9, 2014.

On June 13, 2014 appellant accepted an offer of modified assignment as a city letter carrier from the employing establishment.

By letter dated June 26, 2014, OWCP notified appellant that her claim was initially administratively handled to allow medical payments, as her claim appeared to involve a minor injury resulting in minimal or no lost time from work. However, the merits of her claim had not been formally considered and her claim had been reopened because she had not returned to work in a full-time capacity. Appellant was advised that the evidence of record was insufficient to establish her traumatic injury claim. OWCP notified her of the medical and factual evidence needed and afforded appellant 30 days to respond. No further evidence was received.

By decision dated July 29, 2014, OWCP denied appellant's claim finding that the evidence of record failed to establish that her diagnosed conditions were causally related to the accepted April 30, 2014 employment incident.

On August 22, 2014 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative.

In support of her claim, appellant submitted diagnostic reports from Dr. McNeely dated April 30, 2014. Dr. McNeely reported that x-rays of the left wrist, left elbow, and left hip revealed no bony or joint abnormality. An x-ray of the left tibia/fibula also revealed no fracture or other bony lesion. In another April 30, 2014 diagnostic report, Dr. Lyle T. Saylor, a Board-certified diagnostic radiologist, reported that an x-ray of the lumbosacral spine revealed a negative study of normal vertebral body heights with anatomic alignment.

At the March 23, 2015 hearing, appellant described the April 30, 2014 employment incident and subsequent medical treatment. Counsel for appellant argued that the evidence provided by Dr. Noor should be sufficient to accept the claim as appellant was diagnosed with strains and sought treatment on the date of injury in the emergency room. The hearing representative notified counsel that, while there was some documentation submitted showing that appellant was treated by Dr. Noor on May 20 and June 5, 2014, office notes for those dates were not in the record. Counsel indicated that he would submit these reports. Following the hearing no other evidence was received.

By decision dated June 15, 2015, an OWCP hearing representative affirmed the July 29, 2014 decision finding that the evidence of record failed to establish that appellant's diagnosed conditions were caused by the accepted April 30, 2014 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.[2] 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.[3]

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.[4] The second

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

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

[4] *Elaine Pendleton*, *supra* note 2.

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.[5] 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.[6]

ANALYSIS

OWCP accepted that the April 30, 2014 employment incident occurred as alleged. The issue is whether appellant established that the incident caused her a left-sided shoulder, arm, hip, back, leg, knee, and ankle injury. The Board finds that she failed to submit sufficient medical evidence to support that her injuries were causally related to the April 30, 2014 employment incident.[7]

In medical notes dated May 5 through 20, 2014, Dr. Noor reported that appellant had a fall and her symptoms began on April 30, 2014. Appellant stated that it was raining at work when her ankle gave out while she was going down steps, causing her to fall on her left side. Dr. Noor reported that appellant was being treated for severe strain, inflammation, and pain of her left arm, back, hip, and ankle. The Board finds that the reports of Dr. Noor are not well rationalized. While Dr. Noor noted that appellant's symptoms began on April 30, 2014 when she fell down stairs at work, such generalized statements do not establish causal relationship because they merely repeat her allegations and are unsupported by adequate medical rationale explaining how this physical activity actually caused the diagnosed conditions.[8] While she provided a firm medical diagnosis of strain, she failed to discuss appellant's medical history and provided no opinion regarding the cause of her conditions.

In the May 19, 2014 note and Form CA-17, Dr. Nassirpour reported an April 30, 2014 date of accident and diagnosed lumbar sprain/strain, left hip sprain/strain, left shoulder sprain/strain, left ankle sprain/strain, and muscle spasms. 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

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

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

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

[8] *K.W.*, Docket No. 10-98 (issued September 10, 2010).

established that there is a spinal subluxation as demonstrated by x-ray to exist.[9] Dr. Nassirpour did not diagnose subluxation based on the results of an x-ray.[10] Therefore, his reports do not constitute probative medical evidence as he does not meet the statutory definition of physician.[11]

The remaining medical evidence is also insufficient to establish appellant's claim. Dr. McNeely and Dr. Saylor's April 30, 2014 reports interpreted diagnostic imaging studies and provided no opinion on the cause of appellant's injury and thus are of limited probative value.[12] Their reports noted that x-rays of the left shoulder, wrist, elbow, hip, tibia/fibula, and lumbosacral spine revealed normal with no fracture or bony abnormality. Thus, the reports provide no support for injury and are insufficient to establish a firm medical diagnosis.[13]

While the April 30, 2014 St. Joseph Medical Center Hospital reports show that appellant sought emergency treatment on the date of injury, the reports were signed by Nurse Dana and are not accompanied by a physician's signature. Registered nurses, physical therapists, and physician assistants are not physicians as defined under FECA, and therefore their opinions are of no probative value.[14]

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.[15] An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[16] Appellant's honest belief that the April 30, 2014 employment incident caused her medical injury is not in question. But that belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship.

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the April 30, 2014 employment incident and her injuries. Thus, the Board finds that appellant has failed to meet her burden of proof.

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

[10] 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).

[11] *L.S.*, Docket No. 07-560 (issued June 22, 2007). *See also Alberta S. Williamson*, 47 ECAB 569 (1996) (the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of diminished probative value).

[12] *See D.P.*, Docket No. 15-1325 (issued February 18, 2016).

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

[14] *Supra* note 10. *See also Roy L. Humphrey*, 57 ECAB 238 (2005).

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

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

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her left shoulder, arm, hip, back, leg, and knee conditions are causally related to the accepted April 30, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated June 15, 2015 is affirmed.

Issued: June 22, 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