United States Department of Labor
Employees' Compensation Appeals Board

C.R., Appellant	)	
and	)	**Docket No. 16-0126**
	)	**Issued: May 18, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Media, PA, Employer	)	

Appearances:
Thomas R. Uliase, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 29, 2015 appellant, through counsel, filed a timely appeal of a May 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 a traumatic injury in the performance of duty on December 11, 2013.

FACTUAL HISTORY

On December 11, 2013 appellant, then a 31-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she fell while getting out of her truck in the

[1] 5 U.S.C. § 8101 *et seq.*

performance of duty. She indicated that she injured her lower back and had pain shooting down the right leg. Appellant stopped work on that date.

In a December 11, 2013 statement, appellant stated that she was wearing ice and snow cleats, and properly exited the truck. She explained that as soon as she had both feet placed on the ground, she slipped as she turned around to walk to the mailbox. Appellant noted that she tried to catch herself, but her feet flew up from under her and she fell on her buttocks and back. She did not feel any pain while she finished her collections. However, two hours later, appellant was unable to bend over without being in pain.

OWCP received a December 11, 2013 emergency department note from Riddle Hospital excusing appellant from work and a (Form CA-17) duty status report also dated December 11, 2013 from a nurse practitioner.

In a letter dated January 9, 2014, OWCP noted that appellant's claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and her claim had been administratively handled to allow a limited amount of medical payments, but that it was now developing the claim. It note that medical evidence from a nurse practitioner was insufficient and requested a physician's opinion explaining how the reported work incident caused or contributed to her condition. OWCP informed appellant of the type of evidence needed to support her claim and afforded her 30 days to submit such evidence. Appellant did not respond to the request.

OWCP received January 16, and 23, 2014 work status reports from appellant's health care provider which diagnosed lower back sprain. These reports either had no signature or an illegible signature of the health care provider.

By decision dated February 10, 2014, OWCP denied appellant's claim as she had not established an injury as alleged. It found that the medical evidence failed to demonstrate a diagnosed medical condition causally related to the accepted work-related incident.

On March 5, 2014 counsel requested a hearing, which was held on June 9, 2014. Appellant submitted an employee rights and responsibility traumatic injury form and physical therapy reports.

In a letter dated July 1, 2014, counsel provided additional medical evidence. In a June 25, 2014 report, Dr. Menachem M. Meller, a Board-certified orthopedic surgeon, noted that he had seen appellant on February 11 and 25, March 13, and April 1, 2014. He advised that during her treatment she presented primarily with axial back pain at the belt line and at the posterior superior iliac spine. Dr. Meller explained that there was no bladder or bowel dysfunction, no verifiable neurologic deficits, and a presence of behavioral confounders. He read the results of a magnetic resonance imaging (MRI) scan which was taken on February 19, 2014. It revealed severe degenerative disc disease at L5-S1 with disc extrusion, herniated disc material contacting the traversing S1 nerve roots, and moderate right foraminal narrowing with displacement of the exiting L5 nerve root.

Dr. Meller noted that appellant had physical therapy on January 6, 2014 and was being released for full-time work with permanent restrictions. He summarized that she had a slip and

fall on ice landing on her back and was found to have a significant amount of preexisting degeneration as well as a herniated disc at L5-S1 that was contacting or abutting on the traversing S1 nerve root and displacing the exiting L5 nerve root. Dr. Meller found that appellant had not reached maximum medical improvement and was referred to neurology as he believed that she might benefit from surgical decompression and possibly a fusion.

By decision dated July 28, 2014, an OWCP hearing representative affirmed the February 10, 2014 decision. She found that there was no medical evidence discussing how any specific diagnosis related to a fall on ice at work.

On February 24, 2015 counsel requested reconsideration. He provided new medical evidence and argued that appellant had submitted sufficient medical evidence to establish causal relationship between the diagnosed conditions and her accepted work incident.

In a February 17, 2105 report, Dr. Steven Valentino, an osteopath and a Board-certified orthopedic surgeon, noted that appellant presented with low back pain localized from L3 through S1 with radiation into both legs with numbness. He advised that her symptoms were apportioned to the work injury which occurred on December 11, 2013. Dr. Valentino noted that appellant slipped on ice while at work as letter carrier. He advised that lumbar decompression surgery was recommended but denied. Dr. Valentino explained that appellant had a prior work injury in 2001, while working as a ramp agent for an airline where she had sustained an L5-S1 disc herniation. He indicated that the injury was treated with chiropractic care with improvement such that she had returned to a full-time position. Dr. Valentino advised that the MRI scan performed on February 19, 2014 revealed severe degenerative disc disease at L5-S1 with disc extrusion, with herniated disc material contacting the traversing S1 nerve roots. He opined that "[c]learly this accident caused an aggravation of her prior L5-S1 disc herniation along with aggravation of underlying degenerative disc disease and sciatica." Dr. Valentino stated that his opinion was made within a reasonable degree of medical certainty. He noted that his opinion was based on positive objective findings on physical examination, positive MRI scan, and the fact that appellant had recovered from her prior 2001 injury and had returned to work full time without any symptoms or impairment until the December 11, 2013 incident.

OWCP also received physical therapy reports which were submitted by counsel in support of the claim.

In a May 21, 2015 decision, OWCP denied modification of the prior decision. It noted that Dr. Valentino's opinion was based on appellant's reported history and was summarized in general terms. OWCP also noted that appellant had not provided a history as requested in the initial development letter of January 9, 2014. It found that Dr. Valentino failed to provide an objective basis for his diagnosis apart from the findings from the MRI scan, but those noted findings were consistent with the preexisting injury.

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 timely filed within the

applicable time limitation period of FECA,[2] and that an injury was sustained in the performance of duty.[3] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[5] 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.[6]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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]

ANALYSIS

Appellant alleged that on December 11, 2013 she sustained an injury to her lower back with pain shooting down her right leg after she fell while exiting her delivery truck in the performance of duty. OWCP accepted that the claimed event occurred as alleged.

However, the medical evidence is insufficiently rationalized to establish that the accepted employment incident caused an injury. The medical evidence does not contain a sufficiently reasoned explanation of how the specific employment incident, which occurred on December 11, 2013, caused or aggravated an injury.[8] The Board notes that this is particularly important in light of the prior injury in 2001 in which appellant sustained an L5-S1 disc herniation. The record also reflects that appellant had preexisting degenerative low back conditions.

Appellant submitted a June 25, 2014 report from Dr. Meller who noted axial back pain at the belt line and posterior superior iliac spine. He indicated that the MRI scan of February 19, 2014 revealed severe degenerative disc disease at L5-S1 with disc extrusion, herniated disc

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[5] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[6] *Id.* For a definition of the term "traumatic injury," *see* 20 C.F.R. § 10.5(ee).

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

material contacting the traversing S1 nerve roots, and moderate right foraminal narrowing with displacement of the exiting L5 nerve root. Dr. Meller explained that appellant had a slip and fall on ice, landed on her back, and also had a significant amount of preexisting degeneration as well as a herniated disc at L5-S1 contacting or abutting on the traversing S1 nerve root and displacing the exiting L5 nerve root. He determined that her restrictions were permanent and that she had not reached maximum medical improvement. This report is of limited probative value as Dr. Meller did not provide a clear opinion on causal relationship.[9] To the extent that his statement of the history of appellant having a slip and fall on ice may be construed as supporting causal relationship, he did not provide medical rationale explaining how this incident caused or contributed to the diagnosed condition.

In a February 17, 2015 report, Dr. Valentino noted that appellant presented with low back pain localized from L3 through S1 with radiation into the bilateral legs with numbness. He noted that on December 11, 2013 she slipped on ice while at work and opined that her symptoms were due to the work injury. Dr. Valentino explained that appellant had a prior work injury in 2001 in which she had sustained an L5-S1 disc herniation. He advised that she was treated with chiropractic care at that time with improvement such that she returned to full-time employment. Dr. Valentino reviewed the MRI scan from February 19, 2014. He opined, within a reasonable degree of medical certainty, that "[c]learly this accident caused an aggravation of her prior L5-S1 disc herniation along with aggravation of underlying degenerative disc disease and sciatica." Dr. Valentino explained that his opinion was based upon positive objective findings on physical examination, the positive MRI scan, and the fact that appellant had recovered from her prior 2001 injury and had returned to work full time without any symptomatology or impairment until the December 11, 2013 incident. However, a medical opinion that states that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after the injury is insufficient, without supporting rationale, to establish causal relationship.[10] Furthermore, other than to review the MRI scan, Dr. Valentino did not provide objective findings to explain how he arrived at his conclusion.[11] He did not explain how the MRI scan findings were supportive of a new injury. The need for detailed rationale is particularly important in view of appellant's 2001 history of an L5-S1 disc herniation. Thus, Dr. Valentino's report is of limited probative value.

Diagnostic and other medical reports are insufficient to establish the claim as these reports do not address how employment factors contributed to a diagnosed medical condition.[12]

[9] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[10] *T.M.*, Docket No. 08-975 (issued February 6, 2009).

[11] Rationalized medical opinion evidence is medical evidence, which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s). 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. *Gloria J. McPherson*, 51 ECAB 441 (2000).

[12] *See supra* note 9.

OWCP received nurses' notes and physical therapy reports in support of appellant's claim. However, section 8101(2) of FECA provides that the term physician includes surgeons, podiatrist, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.[13] Nurses are not considered physicians under FECA and are not competent to render a medical opinion.[14] Likewise, physical therapists are not considered physicians under FECA and thus their reports also do not constitute competent medical evidence.[15] The record also contains unsigned reports or reports with an illegible signature. However, reports lacking proper identification do not constitute probative medical evidence.[16] Consequently, these reports are insufficient to establish clear error by OWCP.

Because the medical evidences submitted by appellant do not sufficiently address how the December 11, 2013 activities at work caused or aggravated a low back condition, these reports are of limited probative value[17] and are insufficient to establish that the December 11, 2013 employment incident caused or aggravated a specific injury.

On appeal, counsel for appellant argues that the report of Dr. Valentino warranted further development by OWCP. However, as previously explained above, the evidence was insufficient to establish causal relationship.

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 traumatic injury in the performance of duty on December 11, 2013.

[13] 5 U.S.C. § 8101(2).

[14] *G.G.*, 58 ECAB 389 (2007).

[15] *J.M.*, 58 ECAB 448 (2007); *id.*; *David P. Sawchuck*, 57 ECAB 316 (2006); *Allen C. Hundley*, 53 ECAB 551 (2002).

[16] *See C.B.*, Docket No. 09-2027 (issued May 12, 2010) (a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2).

[17] *See Linda I Sprague*, 48 ECAB 386, 389-90 (1997).

ORDER

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

Issued: May 18, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board