United States Department of Labor
Employees' Compensation Appeals Board

V.W., Appellant	)	
and	)	**Docket No. 16-0524**
	)	**Issued: May 13, 2016**
DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Lee Vining, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 27, 2016 appellant filed a timely appeal of a November 9, 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 July 27, 2013.

FACTUAL HISTORY

On July 28, 2013 appellant, then a 61-year-old recreation technician, filed a traumatic injury claim (Form CA-1) alleging that on July 27, 2013 she sustained an injury to her right leg and back while moving a log, shoveling and cleaning ash and fire rings in the campground in the

[1] 5 U.S.C. § 8101 *et seq.*

performance of duty. She stopped work on July 27, 2013. The employing establishment checked a box marked "yes" in response to whether appellant was injured in the performance of duty. It also indicated that appellant was a volunteer and received reimbursement but no wages.

A July 28, 2013 first report of occupational injury or illness from an individual with an illegible signature, contained a diagnosis of sciatica. The report revealed that appellant campground host, was performing routine cleanup of a campsite and felt pain in the low back radiating to the right leg.

By letter dated September 9, 2013, OWCP informed appellant of the type of evidence needed to support her claim and requested that she submit such evidence within 30 days.

OWCP received a July 28, 2013 radiology report of the lumbar spine, read by Dr. Yuri Parisky, a Board-certified diagnostic radiologist, who found no acute process.

In July 28, 2013 reports, Dr. Richard Shedd, Board-certified in emergency medicine, noted that appellant was performing her normal routine work, which included cleaning fire pits, when she began to have spasm in her lower back, radiating down the right leg. He indicated that the mechanism of injury occurred on July 27, 2013 at 1500 hours. Dr. Shedd diagnosed back pain with sciatica.

By decision dated October 16, 2013, OWCP denied appellant's claim finding that she had not established an injury causally related to established work-related events.

On November 16, 2013 appellant requested reconsideration. In an August 2, 2013 report, Dr. Dennis Crunk, a Board-certified family practitioner, noted that appellant was seen on a "work comp complaint" and that approximately five days ago she injured her back while bending over at work as a hostess. He advised that the pain was severe and she was taken to the hospital emergency and administered/prescribed medication. Dr. Crunk related that appellant was now 80 percent better but continued to be sore in the right back and had pain radiating to the right groin, which seemed to be related to the back pain. He indicated that appellant noted that the pain radiating down into the leg had since resolved. Dr. Crunk also indicated that she denied having prior problems. He assessed lower back pain. Dr. Crunk prescribed restrictions to include no lifting, pulling or pushing greater than 25 pounds. In an August 13, 2013 disability certificate, he restricted appellant to no lifting, pulling or pushing greater than 25 pounds for the next seven days. OWCP also received nurses' notes, a prehospital care report, and copies of previously submitted reports.

By decision dated February 24, 2014, OWCP denied modification of the prior decision.

In a June 23, 2014 letter to Dr. Shedd, appellant requested that he provide a supplemental opinion on causal relationship. In a June 24, 2014 statement, Dr. Shedd advised that appellant was in the process of cleaning when she injured her back. He indicated that she would need physical therapy and should follow up with her physician for further evaluation.

On July 2, 2014 appellant again requested reconsideration.

By decision dated November 4, 2014, OWCP denied modification of its prior decision.

On August 4, 2015 appellant again requested reconsideration. She advised that she recently seen Dr. Crunk who diagnosed sciatica, the same diagnosis Dr. Shedd provided on July 28, 2013 from the emergency room. Appellant explained that her duties as a campground hostess over 19 years, included volunteering for the last 10 years. She noted that she was responsible for cleaning 52 camping sites, including the fire pits. Appellant explained that she had to lift unburned rounds of wood, and move tree trunks, large rocks and boulders out of the fire pits. She advised that this was necessary to clean them and that she sustained her injury in the course of these duties. Appellant requested that her bills be paid as they would not have happened but for her on-the-job injury.

In a June 22, 2015 report, Dr. Crunk noted that two years ago appellant had a low back strain and had not received treatment since. However, appellant continued to have low back discomfort. Dr. Crunk advised that the pain radiated down the right leg for a few days at a time. He examined appellant and found that the spine was nontender. Dr. Crunk also determined that appellant had obvious para lumbar muscle spasm, greater on the left and tender across the metatarsals. He recommended health education counseling and diagnosed sciatica and metatarsalgia in the right leg, which was chronic and recurring with muscle spasm.

By decision dated November 9, 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[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] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[6]

[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).

[6] *John J. Carlone*, 41 ECAB 354 (1989).

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.[7]

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.[8]

ANALYSIS

In this case, appellant alleged that on July 27, 2013 she sustained an injury to her right leg and back in the performance of duty. The evidence supports that the claimed event occurred as alleged. Therefore, the Board finds that the first component of fact of injury is established. The claimed incident -- that appellant was moving logs and rocks while shoveling and cleaning campsites occurred at work as alleged.

However, the medical evidence of record is insufficiently rationalized to establish the second component of fact of injury, that the employment incident caused an injury. The medical evidence contains no reasoned explanation of how the specific employment incident on July 27, 2013 caused or aggravated an injury.[9]

In July 28, 2013 reports, Dr. Shedd noted that appellant was performing her normal routine work, which included cleaning fire pits at work, when she began to have spasm in her lower back, radiating down the right leg. He indicated that the mechanism of injury occurred on July 27, 2013 at 1500 hours and diagnosed back pain with sciatica. The Board notes that, while he described appellant's activities, he did not offer any opinion on causal relationship. Thus Dr. Shedd's reports are of little probative value.[10] Likewise, in a June 24, 2014 statement, he advised that appellant was in the process of cleaning when she injured her back. Dr. Shedd indicated that she would need physical therapy and should follow up with her physician for further evaluation. However, he did not provide an opinion on the relationship between her activities at work and the diagnosed condition. Dr. Shedd did not provide rationale explaining how appellant's work activities caused or aggravated a diagnosed medical condition. Therefore, his reports are of little probative value.

In an August 2, 2013 report, Dr. Crunk noted that appellant was seen on a "work[ers'] comp[ensation] complaint" and that approximately five days ago she injured her back bending over at work as a hostess. He indicated that the pain radiating down her leg had since resolved

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

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

[9] *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).

[10] *Linda I. Sprague*, 48 ECAB 386 (1997) (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).

and that she denied having prior problems. Dr. Crunk diagnosed lower back pain and prescribed restrictions to include no lifting, pulling, or pushing greater than 25 pounds. In an August 13, 2013 disability certificate, he repeated his restrictions. On June 22, 2015 Dr. Crunk noted that two years earlier appellant had a low back strain and had not received treatment since but she continued to have low back discomfort. He diagnosed sciatica, and metatarsalgia in the right leg. However, Dr. Crunk did not provide an opinion on causal relationship. These reports are of limited probative value on the relevant issue of the present case in that they do not contain a clear opinion on causal relationship.[11]

OWCP also received diagnostic reports to include a July 28, 2013 radiology report of the lumbar spine, read by Dr. Parisky. However, reports of diagnostic testing are insufficient to establish the claim as they do not address how employment factors contributed to a diagnosed medical condition.[12]

OWCP also received nurses' notes. However, nurses are not considered physicians under FECA and are therefore not competent to render a medical opinion.[13]

Because the medical reports submitted by appellant do not address how the July 27, 2013 activities at work caused or aggravated a right leg or back condition, these reports are of limited probative value and are insufficient to establish that the July 27, 2013 employment incident caused or aggravated a specific injury.

On appeal, appellant argues that her duties included moving tree trunks, large rocks and boulders out of the fire pits. She further argues that OWCP minimized her activities. The Board notes that appellant's work activities are not contested. The claim is denied as the medical evidence of record was insufficient to establish causal relationship. Appellant also requested that her medical bills be paid. However, as the claim has not been accepted, her bills cannot be paid.

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 did not meet her burden of proof to establish that she sustained a traumatic injury in the performance of duty on July 27, 2013.

[11] *See id.*; *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).

[12] *Id.*

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

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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