United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant	)	
and	)	**Docket No. 16-1091**
	)	**Issued: November 10, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 28, 2016 appellant, through counsel, filed a timely appeal from an April 13, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 an injury causally related to the accepted May 12, 2015 employment incident.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 14, 2015 appellant, then a 54-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on May 12, 2015 she felt pain in her back and experienced rectal bleeding as a result of lifting a bundle of magazines. She was working full-time modified duty and stopped work.[3]

Appellant was initially examined in the emergency room for complaints of pain in her tail bone, back, and hip and for bleeding in her rectum after a fall. In May 12, 2015 hospital records, Dr. Gjon Dushaj, Board-certified in emergency medicine, related her complaints of multiple musculoskeletal pain, swelling, and spasms. He noted that appellant had a work injury on June 17, 2014 involving the tail bone and low back pain. Dr. Dushaj provided examination findings and diagnosed back pain and radiculopathy.

A May 12, 2015 x-ray examination report of the pelvis by Dr. Edmund Louvar, a Board-certified diagnostic radiologist, revealed no fracture, dislocation, or significant degenerative changes. An x-ray examination report of appellant's lumbar spine also demonstrated no fracture. Dr. Louvar further noted mild degenerative changes throughout the lumbar spine and of the facet joints in the lower lumbar spine.

Appellant submitted a March 13, 2015 work status note by Dr. Marek Didluch, a Board-certified family practitioner, who indicated that she may return to work with restrictions of no lifting more than 20 pounds, limited bending, and no driving while taking a muscle relaxant.

In a May 13, 2015 hospital record, Dr. Gregorio Imperial, a family practitioner, indicated that appellant needed to talk to a physician about anxiety attacks and noted that she also had rectal bleeding. Appellant indicated that after lifting boxes for one hour she experienced back pain and had rectal bleeding. Dr. Imperial diagnosed anxiety, hemorrhage of rectum and anus, rectal hemorrhage, and history of colon polyp.

Dr. Didluch provided a return to work note dated May 13, 2015, which authorized appellant to return to work with restrictions of no lifting more than 10 pounds, no excessive bending, no prolonged sitting, and no driving while taking a muscle relaxant.

In a May 14, 2015 letter, appellant's supervisor, stated that on May 12, 2015 appellant was case training for two hours. He noted that at 6:40 a.m. he observed her pushing and leaning on a cart across the room. The supervisor related that appellant never stated anything, but continued to case mail until around 7:30 a.m. He stated that she walked up to him and informed him that she was bleeding in her rectum and was going home. The supervisor pointed out that at no time did appellant ever state that she injured herself while working. He related that he thought her condition was due to her old injury because there was no way that she could have reinjured herself while casing flat mail.

[3] The record reflects that appellant had a previously accepted traumatic injury claim for a June 17, 2014 employment injury (File No. xxxxxx646) for which medical benefits were paid. She also filed an occupational disease claim on February 13, 2015 (File No. xxxxxx143) that is under development.

The postmaster also provided a letter alleging that appellant did not injure herself while she was on duty on May 12, 2015. She explained that appellant was originally injured on June 18, 2014 before she requested to transfer to her current office. Appellant was to report to duty on July 3, 2014. The postmaster related that when appellant did not show up she called appellant and was informed that appellant had injured herself and had medical restrictions, which prevented her from working. She described various instances when she called appellant about reporting for work and appellant informed her that she had work restrictions. The postmaster noted that most recently she instructed appellant to report to training on May 12, 2015. She related that when appellant showed up at work appellant worked for only one hour before she informed her supervisor that she "could not do this and was going back to the [physician's]." The postmaster mentioned that appellant did not tell her supervisor that she had reinjured herself. She pointed out that appellant attributed her May 12, 2015 injury to lifting magazines. The postmaster explained that the u-cart was only 40 inches high and 20 inches deep so appellant would not have had to bend over to get the magazines and the heaviest bundle would only weigh 5 pounds. She reported that appellant had shown a pattern of not wanting to work.

By letter dated May 27, 2015, OWCP advised appellant that the evidence was insufficient to establish her claim. It requested that she respond to specific questions in order to substantiate the factual elements of her claim and provide additional medical evidence to establish that she sustained a diagnosed condition as a result of the alleged employment incident. Appellant was afforded 30 days to submit the additional evidence.

On June 19, 2015 OWCP received appellant's response to its development letter. In an undated, handwritten statement, appellant explained that on May 12, 2015 she returned to work for the first time since February 14, 2015 due to a previous work injury. She noted that she began to case her route and that as she was lifting bundles of magazines on to the station she felt something pop. Appellant related that she was in pain, but she continued to case mail. She reported that she began to feel her underwear get wet and that when she went to the bathroom the toilet was filled with blood. Appellant indicated that she was afraid and went to her supervisor, who advised her to bring in medical documentation. She indicated that she went to the hospital and filed grievances against her supervisors for returning her to work too early.

Dr. Didluch continued to treat appellant and in reports dated May 30 to June 26, 2015 related her complaints of lower back and left buttock pain radiating to the left lower extremity with muscle spasms. He noted that the physical examination was deferred. Dr. Didluch reported restrictions of no lifting more than 10 pounds, no excessive bending, no prolonged sitting, and no driving while taking a muscle relaxant. He diagnosed sacroiliitis.

In a June 5, 2015 attending physician's report (Form CA-20), Dr. Didluch indicated that on February 14, 2015 appellant reinjured her back. He noted that on June 17, 2014 she fell down and was hurt on the job. Dr. Didluch diagnosed lumbago and sacroiliitis. He checked "yes" that appellant's condition was caused by the described employment activity. Dr. Didluch explained that his opinion was based on her symptoms and the described injury. He related that appellant could resume light duty with restrictions and provided a duty status report (Form CA-17), which outlined her work restrictions.

Appellant underwent various diagnostic examinations by Dr. Mark L. Camens, a Board-certified diagnostic radiologist specializing in neuroradiology. In a June 25, 2015 magnetic resonance imaging (MRI) scan examination of the cervical spine, Dr. Camens reported moderate-to-marked facet arthropathy, mild reversal normal cervical lordosis, and disc space narrowing at C5-6 and C6-7. He diagnosed moderate-to-marked spondylotic change without acute process. In a June 25, 2015 diagnostic examination of the left shoulder, Dr. Camens related that appellant had mild, degenerative change in the acromioclavicular joint with no acute fracture or dislocation.

In a decision dated July 1, 2015, OWCP denied appellant's traumatic injury claim. It accepted that the May 12, 2015 incident occurred as described, but denied her claim finding insufficient medical evidence to establish that she sustained a diagnosed condition as a result of the employment incident.

Appellant submitted various diagnostic examination reports. In a July 8, 2015 MRI scan examination of the lumbar spine, Dr. Stephen D. Defriez, a Board-certified diagnostic radiologist, revealed minor anterolisthesis at the L4-5 level, mild posterior facet degenerative changes at L2-3, and moderate-to-severe posterior facet degenerative changes at L3-4 and L4-5. He also noted moderate-to-severe posterior facet degenerative changes at L3-4 and L4-5 and small left foraminal/extraforaminal annular fissure at the L4-5 level. Dr. Defriez diagnosed degeneration of lumbar or lumbosacral intervertebral discs, spinal stenosis and radiculopathy of the lumbar region, low back pain, and radiculopathy.

In July 16, 2015 pelvis radiography of the left hip, Dr. Christopher J. Conlin, Board-certified in nuclear medicine and diagnostic radiology, indicated appellant's complaints of left hip pain. He diagnosed no fracture or dislocation and normal joint spaces of the left hip.

On October 14, 2015 OWCP received appellant's request, through counsel, for reconsideration of the July 1, 2015 decision.

Appellant underwent an MRI scan examination of the pelvis by Dr. Louvar, who noted in a January 25, 2016 report that she had bilateral greater trochanteric bursitis, right worse than left, but no fracture or evidence of muscle injury.

In a January 29, 2016 MRI scan of the cervical spine, Dr. Camens related appellant's complaints of chronic neck pain radiating to the left arm and shoulder for 18 months. He reported multilevel spondylotic change including moderate-to-severe left C3-4, moderate bilateral C5-6 and moderate-to-severe left C6-7 foraminal narrowing, and mild stenosis at C5-6.

By decision dated April 13, 2016, OWCP affirmed the July 1, 2015 decision, as modified. It accepted that the May 12, 2015 incident occurred as alleged, but denied the claim finding insufficient medical evidence to establish that appellant sustained any diagnosed condition causally related to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[5] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.[7] There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[8] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[9] The employee may establish that the employment incident occurred as alleged, but fail to show that her disability or condition relates to the employment incident.[10]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[11] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[12] The weight of the 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.[13]

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[4] *Supra* note 2.

[5] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[6] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[8] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[9] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[11] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

[12] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

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

ANALYSIS

Appellant alleged that on May 12, 2015 she experienced back pain and rectal bleeding as a result of lifting bundles of mail at work. She stopped work. OWCP accepted that the employment incident occurred as alleged, but denied appellant's claim finding insufficient medical evidence to establish that she sustained any diagnosed condition causally related to the May 12, 2015 employment incident. The Board finds that appellant has failed to establish that she sustained an injury causally related to the May 12, 2015 employment incident.

Dr. Dushaj initially examined appellant in the emergency room for complaints of musculoskeletal pain, swelling, and spasms and rectal bleeding at work. Hospital records dated May 12, 2015 reflect that he diagnosed back pain and radiculopathy. Symptoms of pain, however, are not considered compensable medical diagnoses.[14] While Dr. Dushaj also diagnosed radiculopathy, he offered no medical rationale explaining how this condition was caused by appellant's May 12, 2015 work incident. Rather, he noted her June 17, 2014 prior injury involving her tail bone and low back. Medical rationale must include the Dr. Dushaj's detailed opinion on the issue of whether there is a causal relationship between the appellant's diagnosed condition and the implicated employment incident or activity. His opinion must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by her.[15] Accordingly, the Board finds that Dr. Dushaj's opinion lacks probative value because he did not provide medical rationale supporting causal relationship between a firm medical diagnosis and the work incident, based upon a proper history of injury.

Similarly, Dr. Imperial's May 13, 2015 hospital record noted diagnoses of anxiety, rectal hemorrhoid, and history of colon polyp, and noted that appellant had lifted boxes at work for an hour, but offered no opinion regarding causal relationship. A medical report is of no probative value if it fails to provide an opinion as to how the diagnosed condition was caused by the employment incident.[16]

Appellant was also treated by Dr. Didluch, who provided work status notes dated March 13 to May 13, 2015, which authorized her to return to work with restrictions. In reports dated May 30 to June 26, 2015, Dr. Didluch related her complaints of lower back and left buttock pain radiating to her left lower extremity. He diagnosed lumbago and sacroiliitis. In a June 5, 2015 Form CA-20, Dr. Didluch related that on June 17, 2014 appellant sustained an injury when she fell down at work and that on February 14, 2015 she reinjured her back. He marked a box "yes" that her condition was caused or aggravated by the employment activity. The Board has held, however, that when a physician's opinion on causal relationship consists of checking a box marked "yes" to a form question, without explanation or rationale, that opinion is

[14] *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

[15] *See F.G.*, Docket No. 13-0040 (issued May 7, 2013).

[16] *See B.K.*, Docket No. 16-0809 (issued July 21, 2016).

of diminished probative value and is insufficient to establish a claim.[17] The Board further notes that Dr. Didluch noted an injury date of June 17, 2014 and a reinjury date of February 14, 2015. Dr. Didluch did not attribute appellant's condition to the May 12, 2015 employment injury. The Board has held that medical opinions based on an incomplete or inaccurate history are of limited probative value.[18] For these reasons, Dr. Didluch's opinion on causal relationship is insufficient to establish appellant's claim.

The additional diagnostic examinations of appellant's lumbar spine, including a May 12, 2015 x-ray examination by Dr. Louvar and a July 8, 2015 MRI scan examination by Dr. Defriez, revealed degeneration of the lumbosacral intervertebral discs, spinal stenosis, and radiculopathy of the lumbar region but contained no opinion on the cause of appellant's back condition. Likewise, Dr. Conlin's July 16, 2015 and Dr. Louvar's January 25, 2016 diagnostic reports of appellant's pelvis demonstrated a normal examination and Dr. Camens' June 25, 2015 and January 29, 2016 MRI scan examination reports of the cervical spine revealed degenerative changes. None of the physicians, however, provided an opinion on whether her conditions were causally related to the May 12, 2015 employment incident. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[19] These diagnostic reports also fail to establish appellant's claim.

On appeal, counsel alleges that OWCP's decision was contrary to fact and law. The evidence of record, however, supports OWCP's determination that appellant did not meet her burden of proof to establish her traumatic injury claim. The issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.[20] As previously explained, the medical evidence on the record was insufficient to establish such a causal relationship. The Board finds that appellant has not established a traumatic injury 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 has not met her burden of proof to establish an injury causally related to the accepted May 12, 2015 employment incident.

[17] *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[18] *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[19] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[20] *W.W.*, Docket No. 09-1619 (June 2, 2010); *David Apgar supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board