United States Department of Labor
Employees' Compensation Appeals Board

T.R., Appellant	)	
and	)	**Docket No. 17-0840**
	)	**Issued: December 11, 2017**
FEDERAL JUDICIARY, U.S. PROBATION, Buffalo, NY, Employer	)	

Appearances:
Edward L. Daniel, for the appellant[1]
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 March 6, 2017 appellant, through her representative, filed a timely appeal from a January 10, 2017 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 to consider the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish lumbar conditions causally related to the accepted September 5, 2014 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 September 8, 2014 appellant, then a 39-year-old probation officer specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 5, 2014 she injured her middle and lower back while participating in required defensive tactics training. She stopped work on September 5, 2014.

In a September 6, 2014 report, Dr. Debra Meness, a treating osteopath specializing in family medicine, diagnosed lumbosacral pain and indicated appellant could return to work on September 9, 2014.

In a September 6, 2014 hospital report, Dr. Meness noted that appellant was seen for lower back pain following tactical training at work on September 5, 2014. A physical examination revealed tenderness with a diagnosis of lumbosacral pain.

In a September 22, 2014 report, Dr. Narendra Kansal, a Board-certified neurosurgeon, diagnosed lumbar spondylosis and lumbar sprain and wrote that appellant was disabled from work until October 22, 2014.

By correspondence dated September 26, 2014, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. She was advised regarding the medical and factual evidence required to establish her claim and was afforded 30 days to provide the requested information.

In response to OWCP's request appellant submitted medical and factual evidence including a written statement, chiropractic treatment notes, diagnostic tests, and physical therapy notes covering the period November 30, 2004 to October 20, 2014 regarding treatment for a lower back condition.

In a September 10, 2014 report, Dr. Donald A. Jacob, a treating Board-certified internist, diagnosed right sacroiliac joint dysfunction. A description of the claimed September 5, 2014 employment injury was noted and physical examination findings were provided. Examination findings included limited lumbar extension with significant right sacroiliac pain and tenderness over the right sacroiliac joint. Dr. Jacob noted that appellant had a history of lower lumbar disc herniation and recommended chiropractic treatment.

In reports dated September 11 and 19, and October 3, 2014, Dr. Christopher A. Grazen, a chiropractor, noted that appellant sustained a back injury on September 4, 2014 while participating in defensive tactics training. Dr. Grazen noted that appellant had been referred for treatment of a right sacroiliac strain/sprain. Physical examination findings were provided and a review of a September 6, 2014 x-ray interpretation showed phase I subluxation, no fracture, and mild decreased L4-5 and L5-S1 disc space. Diagnoses included sacroiliac, thoracic, and lumbar dysfunction, severe right sacroiliac sprain/strain, and lumbar disc inflammation.

In a September 22, 2014 report, Dr. Kansal diagnosed a lumbar sprain which he noted was complicated by her lumbar spondylosis. He replied "yes" to the questions of whether appellant's history and injury were consistent with her complaints and whether the objective findings were consistent with the described injury. In a September 22, 2014 form, Dr. Kansal indicated that appellant had a partial temporary disability of 75 percent.

On October 20, 2014 Dr. Meness reported appellant had been seen for a lumbar and sacral sprain work injury. She wrote that the injury occurred on September 6, 2014 while appellant was performing a takedown defensive tactic. Dr. Meness opined that appellant's September 6, 2014 injury aggravated her preexisting back condition.

By decision dated October 29, 2014, OWCP denied appellant's claim finding the medical evidence of record insufficient to establish causal relationship between the diagnosed condition and the accepted September 5, 2014 employment incident.

Subsequent to the denial of her claim, OWCP received a September 5, 2014 disability note and a September 10, 2014 doctor's progress note form from Dr. Leslie J. Lehmann, a treating osteopath specializing in family medicine, and an October 3, 2014 report by Dr. Grazen. Dr. Lehmann, observed lower back pain which increased with range of motion and a positive Gilette's test. She determined that appellant was currently disabled from work. A date of injury was listed as September 5, 2014 and lower back and sacroiliac joint injury was noted. Dr. Grazen noted the history of the September 5, 2014 incident noted a 10-year history of a lumbar spine disc injury, and made a physical therapy referral.

In a November 26, 2014 report, Dr. Kansal noted appellant's symptoms were unchanged. A physical examination revealed no paraspinal spasms and no tenderness. Diagnoses included lumbar spondylosis, lumbar sprain, and cervical radiculitis. He replied "yes" to the questions of whether appellant's history and injury were consistent with her complaints and whether the objective findings were consistent with the described injury. In a September 22, 2014 form report, Dr. Kansal checked that appellant had a partial temporary disability of 50 percent.

On August 12, 2015 appellant requested reconsideration and submitted additional medical evidence.

In a September 12, 2014 report, Dr. George C. Kalonaros, a treating physician specializing in neurology, noted that appellant was seen for lower back pain radiating into both lower extremities. He noted that she sustained an injury at work on September 5, 2014 while participating in tactical training. Examination and history findings were noted. Under impression, Dr. Kalonaros diagnosed persistent and incapacitating paresthesias which began following her work injury. He attributed appellant's condition to the accepted September 5, 2014 employment incident based on the sudden development of symptoms following the injury.

Dr. Kalonaros, in reports dated January 14 and April 29, 2015, indicated that appellant was seen for continuing complaints of low back pain and persistent lower extremity parathesias. He opined that she likely sustained a cauda equina contusion and that she remained disabled from work. In the April 29, 2015 report, Dr. Kalonaros attributed appellant's cauda equina contusion to the accepted September 5, 2014 employment incident.

In a report dated July 15, 2015, Dr. Kalonaros diagnosed thoracic or lumbosacral neuritis or radiculitis and lumbar disc displacement without myelopathy. He reported that physical therapy had worsened appellant's symptoms and that appellant continued to be disabled from work. Dr. Kalonaros attributed her disability to the accepted September 5, 2014 employment incident.

By decision dated August 21, 2015, OWCP denied modification of its prior decision. It found that the medical evidence of record did not contain a rationalized opinion explaining how the diagnosed conditions had been caused or aggravated by the accepted September 5, 2014 employment incident.

In an August 4, 2016 report, Dr. Kalonaros noted that appellant was first seen in December 2014 for persistent back and lower extremity pain complaints due to an accepted September 5, 2014 work incident. He summarized the medical treatment provided prior and subsequent to December 2014. Dr. Kalonaros explained that he diagnosed cauda equina based on her injury history and symptoms and noted that physical therapy aggravated her symptoms. He opined that the accepted September 5, 2014 work incident aggravated her preexisting lumbar disc disease and that she was permanently impaired. Dr. Kalonaros attributed appellant's persistent symptoms of burning and chronic pain as a result of the accepted September 5, 2014 work incident.

On August 19, 2016 appellant, through her representative, requested reconsideration. The representative contended that the medical evidence submitted was sufficient to establish that appellant's preexisting back conditions had been aggravated by the accepted September 5, 2014 employment incident. He also argued that because Dr. Grazen diagnosed a subluxation by x-ray interpretation, he was considered a physician under FECA.

On November 11, 2016 OWCP received a December 8, 2014 report from Dr. Peterkin Lee-Kwen, an examining Board-certified neurologist and vascular neurologist. The report contained a history of illness including complaints of bilateral leg burning and tingling since September 2014 and back pain as the result of a work injury. A physical examination was conducted and diagnostic testing was reviewed. Diagnoses included mild-to-severe cervical radiculopathy, cervical radiculitis, low back pain, and mild-to-severe L4-5 disc disease.

By decision dated January 10, 2017, OWCP denied modification of its prior decision. It found that the medical evidence of record failed to explain how the diagnosed conditions had been caused or aggravated by the accepted September 5, 2014 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.[4] 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.[5]

[3] *Id*.

[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[5] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.[6] 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.[7] 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.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[9] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the employment incident.[10] 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.[11]

ANALYSIS

Appellant reported injuring her mid and lower back while participating in defensive tactics training on September 5, 2014. OWCP accepted that the incident occurred while she was participating in defensive tactics training on September 5, 2014. However, it denied the claim finding that appellant had not established causal relationship between the accepted incident and the diagnosed conditions.

The Board finds that appellant has not submitted sufficient medical evidence to establish that the September 5, 2014 work incident caused or aggravated her diagnosed lumbar conditions.

In reports dated September 12, 2014, January 14, 29, and July 15, 2015 and August 4, 2016 Dr. Kalonaros noted diagnoses including cauda equina contusion, lumbar disc displacement without myelopathy, thoracic or lumbosacral neuritis or radiculitis, persistent low back and lower extremity pain, and persistent and incapacitating paresthesias. He noted a history of injury and attributed appellant's condition to her accepted September 5, 2014 employment incident. On September 12, 2014 he explained that he attributed the diagnosis to the accepted September 5, 2014 employment incident based on the sudden development of symptoms following the incident. In reports dated January 14, 29, and July 15, 2015 he attributed her disability and diagnosed conditions to the injury. In his August 4, 2016 report, Dr. Kalonaros opined that

[6] *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

[7] *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[8] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

[9] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

[10] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

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

appellant's preexisting back condition had been aggravated by the accepted September 5, 2014 employment incident. The Board has held that the fact that a condition manifests itself or worsens during a period of employment[12] or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed condition and employment factors.[13] Dr. Kalonaros did not otherwise provide medical rationale explaining how or why appellant's claimed disability from work was caused or aggravated by the accepted incident. The need for rationale is particularly important where the record indicates that appellant has a preexisting condition.[14] Therefore, the medical reports of Dr. Kalonaros are insufficient to establish the claim.

The record contains reports dated September 22 and November 26, 2014, from Dr. Kansal indicating that appellant was disabled from work and diagnosing lumbar spondylosis, lumbar sprain, and cervical radiculitis. He replied "yes" to the question of whether the diagnosed conditions were causally related to the accepted September 5, 2014 employment incident. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[15] Thus, Dr. Kansal's reports are insufficient to meet appellant's burden of proof to establish her claim.

Appellant submitted a September 6, 2014 hospital report and reports dated September 6 and October 20, 2014 from Dr. Meness diagnosing lumbosacral pain and noting the accepted September 5, 2014 incident. On October 20, 2014 Dr. Meness opined that the accepted September 5, 2014 employment incident aggravated appellant's preexisting back condition. A mere conclusion without the necessary rationale explaining how and why the physician believes that appellant's work incident could result in the diagnosed condition is insufficient to meet appellant's burden of proof.[16] Dr. Meness' reports are insufficient to discharge appellant's burden of proof as they do not present a rationalized medical opinion regarding causal relationship.

Appellant also submitted a September 5, 2014 disability note and September 10, 2014 progress note from Dr. Lehmann in which he diagnosed lower back and sacroiliac joint injuries that he concluded had been impacted by the September 5, 2014 injury. Dr. Lehmann did not explain why he attributed the diagnosed conditions to the accepted September 5, 2014 employment incident. He provided no supporting rationale explaining the mechanism by which the accepted September 5, 2014 work incident caused or aggravated appellant's preexisting back condition. Thus, these reports are insufficient to meet appellant's burden of proof.[17]

[12] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[13] *B.B.*, Docket No. 13-256 (issued August 13, 2013); *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

[14] *See R.B.*, Docket No. 17-0556 (issued June 2, 2017).

[15] *Sedi L. Graham*, 57 ECAB 494 (2006).

[16] *See Beverly A. Spencer*, 55 ECAB 501 (2004).

[17] *See K.M.*, Docket No. 17-0437 (issued June 1, 2017).

In a December 8, 2014 report, Dr. Lee-Kwen noted that appellant sustained a work injury on September 4, 2014 and has had back pain since the injury. He diagnosed mild-to-severe cervical radiculopathy, cervical radiculitis, low back pain, and mild-to-severe L4-5 disc disease. Furthermore, Dr. Lee-Kwen offered no opinion as to the cause of the diagnosed conditions. The Board has held that 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.[18]

The record also contains reports dated September 11, 19, and October 3, 2014 from Dr. Grazen, a treating chiropractor, diagnosing sacroiliac, thoracic, and lumbar dysfunction, severe right sacroiliac sprain/strain, lumbar disc inflammation, and phase I subluxation by x-ray. Under FECA a chiropractor is considered a physician only to the extent that the reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[19] Because Dr. Grazen diagnosed subluxation by x-ray, as indicated in his reports, he is considered a physician under FECA. However, his reports are insufficient to establish appellant's claim. While Dr. Grazen referenced the accepted September 5, 2014 employment incident in his reports, he offered no opinion regarding the cause of the diagnosed conditions. As previously noted, the Board has held that medical reports are of limited probative value when a physician fails to provide an opinion on the causal relationship between the diagnosed conditions and an accepted employment incident.[20] As Dr. Grazen offered no opinion as to cause of appellant's diagnosed conditions, his reports are insufficient to meet her burden of proof.

Appellant also submitted physical therapy reports. However, the Board has held that physical therapists are not considered physicians under FECA and their reports are of no probative value.[21] Thus, this evidence is insufficient to establish the claim.

Likewise, the other medical evidence of record, such as diagnostic test reports, is of limited probative value as it fails to provide an opinion on the causal relationship between

[18] *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[19] Section 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 R.M.*, 59 ECAB 690 (2008); *Merton J. Sills*, 39 ECAB 572 (1988).

[20] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Ellen L. Noble*, 55 ECAB 530 (2004) (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).

[21] *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician 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.

appellant's job and her diagnosed lumbar condition.[22] For this reason, this evidence is insufficient to meet her burden of proof to establish the claim.

Thus, the Board finds that appellant has failed to meet her burden of proof.

On appeal appellant's representative contends that OWCP substituted its opinion instead of reviewing the medical evidence as required. She also argues that the evidence submitted establishes the claim. Contrary to the representative's argument, OWCP properly evaluated the evidence under its procedures, the regulations, and case law.

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 lumbar conditions causally related to the accepted September 5, 2014 employment incident.

[22] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *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 limited probative value on the issue of causal relationship).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 10, 2017 is affirmed.

Issued: December 11, 2017
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