United States Department of Labor
Employees' Compensation Appeals Board

A.Q., Appellant	)	
and	)	**Docket No. 16-1563**
	)	**Issued: January 12, 2017**
DEPARTMENT OF VETERANS AFFAIRS, SAN FRANCISCO VETERANS ADMINISTRATION HEALTH, San Francisco, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 26, 2016 appellant filed a timely appeal from a June 21, 2016 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 the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury causally related to a February 23, 2016 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 10, 2016 appellant, then a 47-year-old medical instrument technician, filed a traumatic injury claim (Form CA-1), alleging that on February 23, 2016, while working in the hemodialysis unit, she was disinfecting dialysis machines and felt lower back pain. She stopped work on March 11, 2016.

Appellant was treated by an employing establishment nurse practitioner on March 10, 2016 for low back pain and left thigh numbness which began on February 23, 2016. She reported pushing and pulling a dialysis machine from room to room while cleaning it. The nurse practitioner diagnosed acute low back pain with intermittent thigh numbness which began on February 23, 2016 while appellant was moving heavy equipment at work.

Appellant submitted a March 14, 2016 California Doctor's First Report of Occupational Injury or Illness prepared by Dr. Sarah J. Janssen, Board-certified in occupational medicine, who treated appellant for a lower back strain. She reported that on February 23, 2016 appellant was moving a 500-pound machine as part of her daily work when she felt numbness in her left thigh and weakness in her lower back. She noted appellant's history was significant for lower back pain and right leg symptoms. Dr. Janssen indicated that a magnetic resonance imaging (MRI) scan of the lumbar spine dated September 15, 2014 revealed multilevel lumbar degenerative disc disease, most notably at L4-5. Findings upon examination revealed tenderness of the thoracic spine, lumbar spine at L3-5 and paralumbar spine, decreased range of motion of the lumbar spine, and paraesthesias. Dr. Janssen diagnosed lumbar disc degeneration with neurological manifestation and lumbar muscle strain. She recommended physical therapy and modified duty. Dr. Janssen opined that the underlying cause of appellant's symptoms was lumbar spondylosis, a nonindustrial condition. However, she advised that, but for the employment activities, the preexisting condition would not have become disabling or needed medical treatment. In an industrial work status report dated March 14, 2016, Dr. Janssen noted that appellant could return to work modified duty.

In a primary treating physician's progress report dated April 4, 2016, Dr. Janssen treated appellant for persistent low back pain, radicular symptoms, numbness, and tingling. Appellant reported her job involved frequent heavy pushing, pulling, and patient transfers. She indicated that her restrictions could not be accommodated and therefore she was not working. Dr. Janssen noted appellant's history was significant for chronic low back pain. Examination findings included tenderness to palpation of the parathoracic, lumbar, and paralumbar areas and decreased range of motion. Dr. Janssen noted a September 15, 2014 lumbar spine MRI scan revealed degenerative and discogenic disease at L4-5 with grade 1 anterolisthesis, moderate broad-based posterior disc bulge, facet hypertrophy, and mild bilateral neural foraminal narrowing. She diagnosed lumbar disc degeneration with neurological manifestation and lumbar muscle strain. Dr. Janssen advised that appellant was making slow progress and prescribed a prednisone taper, Tramadol, and physical therapy. She opined that the underlying cause of appellant's symptoms was lumbar spondylosis, a nonindustrial condition; however, but for the employment activities, the preexisting condition would not have become disabling or needed medical treatment.

In an industrial work status report dated April 4, 2016, Dr. Saquib Syed Rizvi, a Board-certified internist, diagnosed lumbar disc degeneration with neurological manifestation and

lumbar muscle strain. He noted that appellant could work modified duty from April 4 to 28, 2016 and attended physical therapy.

In a primary treating physician's progress report dated April 28, 2016, Dr. Janssen noted that appellant presented with minimal improvement since the initial date of injury. Physical examination was unchanged. Dr. Janssen noted an MRI scan of the lumbar spine dated February 28, 2016 showed multilevel degenerative change of the lumbar spine most notably at L4-5, crowding of the lateral recesses, and probable abutment of the traversing bilateral L5 nerve roots. She diagnosed lumbar disc degeneration, neurological manifestation, and lumbar muscle strain. Dr. Janssen noted that appellant had delayed recovery with minimal improvement in radicular symptoms. She recommended acupuncture and physical therapy. Dr. Janssen returned appellant to modified work on April 28, 2016.

By letter dated May 10, 2016, OWCP advised appellant that her claim had originally been received as a simple, uncontroverted case which resulted in minimal or no time loss from work. It indicated that appellant's claim was administratively handled to allow medical payments up to $1,500.00, but the merits of the claim had not been formally adjudicated. OWCP advised that because a claim for wage loss was received her claim would be formally adjudicated. It advised appellant of the evidence needed to establish her claim, including a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents had contributed to her claimed lumbar condition.

Appellant submitted an incident report and related that, while working in the hemodialysis unit on February 23, 2016, she pulled and repositioned eight dialysis machines and several heavy tables, which caused radiating pain in her low back with numbness in her left thigh. She ignored the pain and continued to work.

In work status reports dated April 28, May 19, June 3 and 13, 2016, Dr. Janssen diagnosed lumbar disc degeneration with neurological manifestation, lumbar muscle strain and urinary incontinence. She continued appellant on modified duty. In primary treating physician's progress reports dated May 19 and June 3, 2016, Dr. Janssen advised that appellant presented with minimal improvement since the initial date of injury with three episodes of urinary incontinence. Physical examination was unchanged. Dr. Janssen diagnosed lumbar disc degeneration with neurological manifestation and lumbar muscle strain. She noted that appellant had minimal improvement in radicular symptoms with physical therapy and prednisone taper. Dr. Janssen recommended physical therapy, acupuncture, and modified work duties.

In a primary treating physician's progress report dated June 7, 2016, Dr. Rizvi noted that appellant presented with minimal improvement since the initial date of injury with episodes of incontinence. He noted that the physical examination was unchanged and diagnosed lumbar disc degeneration with neurological manifestation and lumbar muscle strain. Dr. Rizvi recommended physical therapy, acupuncture, and modified work duties. Also submitted were physical therapy reports from May 20 to June 14, 2016.

By decision dated June 21, 2016, OWCP denied appellant's claim because the medical evidence of record was insufficient to establish that the medical condition was causally related to the accepted work incident.

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 filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2]

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. There are two components involved in establishing 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[3]

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.[4]

ANALYSIS

OWCP accepted that on February 23, 2016 appellant was working in the hemodialysis unit and pulled and repositioned dialysis machines and several heavy tables. Appellant was diagnosed with degenerative and discogenic disease at L4-5 with grade 1 anterolisthesis, moderate broad-based posterior disc bulge, facet hypertrophy with neurological manifestation, and lumbar muscle strain. However, the Board finds that appellant has not submitted sufficient medical evidence to establish that these work activities caused or aggravated her diagnosed low back conditions.

Appellant was treated by Dr. Janssen on March 14, 2016 who diagnosed lumbar disc degeneration with neurological manifestation and lumbar muscle strain. She reported that on February 23, 2016 she was moving a 500-pound machine as part of her daily work when she felt numbness in her left thigh and weakness in her lower back. Dr. Janssen noted a September 2014

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

[3] *T.H.*, 59 ECAB 388 (2008).

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

lumbar MRI scan showed multilevel lumbar degenerative disc disease, most notably at L4-5. She opined that the underlying cause of appellant's symptoms was lumbar spondylosis, a nonindustrial condition. However, Dr. Janssen advised that, but for the employment activities stated above, the preexisting condition would not have become disabling or needed medical treatment. The Board finds that, although Dr. Janssen supported causal relationship, she did not provide sufficient medical rationale explaining the basis of her conclusory opinion regarding the causal relationship between appellant's lumbar condition and the factors of employment.[5] Dr. Janssen did not explain the process by which pulling and repositioning dialysis machines and heavy tables would cause the diagnosed condition and why such condition would not be due to any nonwork factors such as age-related degenerative changes. Thus, these reports are insufficient to meet appellant's burden of proof.

Similarly, Dr. Janssen provided other reports from April 4 to June 3, 2016, where she diagnosed lumbar disc degeneration with neurological manifestation and lumbar muscle strain. She noted appellant's history was significant for degenerative and discogenic disease at L4-5. Dr. Janssen opined that the underlying cause of appellant's symptoms was lumbar spondylosis, a nonindustrial condition, but advised that appellant's condition would not have become disabling or require medical treatment but for employment activities. Again, she did not explain why such activity would result in a causal relationship to the diagnosed condition. Dr. Janssen did not adequately explain why moving dialysis machines and heavy tables was a competent cause or contributor to appellant's diagnosed lumbar conditions, specifically, when appellant had a preexisting degenerative disease on multiple lumbar levels.[6] She did not explain the medical reasoning, or rationale, that formed the basis of her conclusion on causal relationship.

Dr. Janssen provided other work status reports dated March 14 to June 13, 2016 who diagnosed lumbar disc degeneration with neurological manifestation, lumbar muscle strain, and urinary incontinence. However, these reports did not specifically address whether appellant's employment activities caused or aggravated the diagnosed medical conditions. These reports are of limited probative value.[7]

In an industrial work status report dated April 4, 2016, Dr. Rizvi diagnosed lumbar disc degeneration with neurological manifestation and lumbar muscle strain. He noted that appellant could work modified duty from April 4 to 28, 2016. Similarly, in a June 7, 2016 report, Dr. Rizvi noted that appellant presented with minimal improvement since the initial date of injury with episodes of incontinence. He diagnosed lumbar disc degeneration with neurological manifestation and lumbar muscle strain. Dr. Rizvi returned appellant to modified work. These reports are insufficient to establish the claim as Dr. Rizvi did not provide a history of injury[8] or

[5] *Id.*

[6] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[7] *A.D.*, 58 ECAB 149 (2006) (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).

[8] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.[9]

Appellant submitted a report from a nurse practitioner dated March 10, 2016. Also submitted were physical therapy reports from May 20 to June 14, 2016. The Board has held that reports signed by a nurse or physical therapist are not considered medical evidence as a nurse and physical therapist are not physicians under FECA.[10] Thus, the treatment records from the nurse and physical therapist are of no probative medical value in establishing appellant's claim.

The remainder of the medical evidence, including diagnostic test reports, is of limited probative value as it does not provide an opinion on the causal relationship between the February 23, 2016 work incident and appellant's diagnosed medical conditions.[11]

On appeal appellant asserts that OWCP improperly denied the claim and that she submitted sufficient medical evidence to establish that on February 23, 2016 she injured her lumbar spine while pushing and pulling dialysis machines and other equipment. As found above, the medical evidence does not establish that appellant's diagnosed conditions are causally related to her employment. Appellant has not submitted a physician's report, based on an accurate history, which explains how work activities on February 23, 2016 caused or aggravated a lumbar condition. She has failed to meet her burden of proof.

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 an injury causally related to a February 23, 2016 employment incident.

[9] *See A.D., supra* note 7.

[10] *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 the 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).

[11] *See A.D., supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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