United States Department of Labor
Employees' Compensation Appeals Board

B.D., Appellant	)	
and	)	**Docket No. 17-0402**
	)	**Issued: June 12, 2017**
NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION, NATIONAL FISHERIES SERVICE, ALASKAN OBSERVERS, INC., Seattle, WA, Employer	)	

Appearances:
Appellant, pro se
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 13, 2016 appellant filed a timely appeal from a September 13, 2016 merit decision and a November 25, 2016 nonmerit 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 to consider the merits of the case.[2]

ISSUES

The issues are: (1) whether appellant established an injury causally related to the accepted July 13, 2016 employment incident; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after the November 25, 2016 decision was issued. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board lacks jurisdiction to review this additional evidence. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On July 28, 2016 appellant, then a 30-year-old ground fish observer who worked aboard the Northern Leader in the Bering Sea, filed a traumatic injury claim (Form CA-1) alleging that on July 13, 2016 she performed heavy lifting duties which caused blood clots in her right arm.

By letter dated August 9, 2016, OWCP informed appellant that further factual and medical evidence was necessary to support her claim. Appellant was afforded 30 days to submit the additional evidence.

In a July 22, 2016 report, Dr. Michael R. Go, a Board-certified surgeon, related that he examined appellant for right upper extremity deep vein thrombosis (DVT). He noted that on July 13, 2016, appellant had right upper extremity redness, pain, and swelling, and was diagnosed with DVT. Dr. Go indicated that appellant started anticoagulation treatment on July 18, 2016, with improvement of her symptoms. In a July 26, 2016 cardiovascular catheterization report, he explained that appellant had undergone right subclavian angiography, ultrasound guided access, superior vena caval angiogram, and placement of a Lysis catheter. In a July 27, 2016 report, Dr. Go indicated that he performed a thrombolysis check, a right upper extremity venogram, and a right subclavian vein angioplasty. He noted that the procedures were successful and that there was no residual clot. In a separate July 27, 2016 note, Dr. Go certified that appellant required inpatient services due to DVT requiring thrombolysis. In a discharge summary dated July 27, 2016, Dr. Go indicated that appellant had a strong family history of venous thromboembolism, was admitted to the hospital on July 26, 2016, and underwent a procedure on July 27, 2016 with successful lysis of the clot and balloon dilation of the subclavian vein stenosis, consistent with thoracic outlet syndrome. The report indicated that appellant tolerated the procedure well and there were no complications. Appellant was discharged home.

In a July 27, 2016 x-ray report, Dr. Jason Payne, a Board-certified surgeon, interpreted an x-ray of appellant's cervical spine as an unremarkable study.

In an August 1, 2016 report, Sara Sargent, a nurse practitioner, noted that appellant was treated by Dr. Go. She listed appellant's diagnoses as brachial plexus disorders (thoracic outlet syndrome) and acute embolism and thrombosis of deep veins of unspecified upper extremity. Ms. Sargent noted that, while appellant had not had a prior DVT, her mother had DVT.

In an August 15, 2016 report, Dr. Go related that appellant had a strong family history of clotting and had experienced her first unprovoked right upper extremity DVT. The report noted an element of thoracic outlet syndrome, and concluded that it was likely that appellant's thrombophilia and the type of manual labor that she performed at work were contributing causes. Dr. Go noted that first rib resection was planned for August 17, 2016.

In a decision dated September 13, 2016, OWCP denied appellant's claim. It determined that, although appellant had established that the employment incident occurred as alleged, and that she had established a medical diagnosis, it denied her claim because she had not established causal relationship between the diagnosed medical condition and the accepted employment incident.

On October 2, 2016 appellant requested reconsideration. In support thereof, she submitted a September 30, 2016 note by Erin R. Zahorujko, a physician assistant for Dr. Go. Ms. Zahorujko indicated that appellant was seen initially on July 22, 2015 with significant pain, redness and swelling to the upper right extremity which began on July 13, 2016. She noted that appellant was diagnosed with DVT and started on anticoagulation on July 18, 2016. Ms. Zahorujko noted that this occurred while working on a fishing boat with labor duties that required a significant amount of heavy lifting and overhead activities. She indicated that appellant was diagnosed with right Paget-Schroetter disease and underwent right upper extremity venogram with initiation of thrombolysis on July 26, 2016, and ultimately came to the right first rib resection August 17, 2016. Ms. Zahorujko opined that the original DVT was presumed to have been provoked by the extensive labor duties of the use of her right upper extremity.

By decision dated November 25, 2016, OWCP denied reconsideration as it determined that the evidence of record was insufficient to warrant merit review of the September 13, 2016 decision.

LEGAL PRECEDENT -- ISSUE 1

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 timely filed within the applicable time limitation period 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 are 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.[4]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.[5] In order to meet his or her burden of proof to establish fact of injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.[6]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7] The medical evidence required to

[3] *Supra* note 1.

[4] *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

[5] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

[6] *Linda S. Jackson*, 49 ECAB 486 (1998).

[7] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.[8]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant had established that the July 13, 2016 employment incident occurred as alleged on July 13, 2016 and that she had established a medical condition. However, it denied appellant's claim as she failed to submit medical evidence in support of causal relationship between the July 13, 2016 employment incident and her DVT.

The Board finds that the medical evidence of record is insufficient to establish causal relationship between the accepted employment incident and the accepted medical diagnosis.

Dr. Go initially treated appellant for her DVT, but he did not provide a rationalized medical explanation as to how appellant's accepted employment incident, of heavy lifting on July 13 2016, caused her blood clot condition. In the reports written in July 2016, Dr. Go did not offer any opinion with regard to causation of appellant's DVT. Medical reports that do not provide an opinion on causal relationship are of little probative value.[9]

In his August 15, 2016 report, Dr. Go noted that appellant had experienced her first unprovoked right upper extremity DVT. He opined that appellant's thrombophilia and the type of manual labor she performed at work were contributing causes. An opinion from a physician on causal relationship is insufficient to establish the claim if it does not explain how or why the accepted incident caused or aggravated a diagnosed condition.[10] This is especially important in this case as Dr. Go's report indicated a family history of clotting. Lacking medical rationale on the issue of causal relationship, Dr. Go's report is of limited probative value and thus insufficient to establish that appellant sustained an employment-related injury causally related to the accepted July 13, 2016 employment incident.[11]

The Board further notes that the diagnostic study by Dr. Payne does not establish causal relationship as he simply interpreted an unremarkable x-ray study of appellant's cervical spine. As Dr. Payne never discussed causation nor provided an opinion with regard to a positive medical diagnosis, his report is of limited probative value.[12]

[8] *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

[9] *See L.M.*, Docket No. 14-973 (issued August 25, 2014).

[10] *A.N.*, Docket No. 17-0061 (issued April 13, 2017).

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

[12] *Id.*

OWCP also received an August 1, 2016 report from a nurse practitioner. Reports by the nurse practitioner have no probative value as nurses are not considered physicians as defined under FECA.[13]

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[14] Without a detailed medical report explaining how and why appellant's DVT was caused by the employment incident of July 13, 2016, appellant has not met her burden of proof.[15]

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.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,[16] OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.[17] When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.[18]

ANALYSIS -- ISSUE 2

OWCP properly reviewed appellant's request for reconsideration under the appropriate criteria for timely filed reconsideration petitions.

In her request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP.

Furthermore, appellant did not submit relevant and pertinent new evidence not previously considered by OWCP. The underlying issue in this case is whether appellant has submitted

[13] The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); *L.D.*, 59 ECAB 648 (2008) (nurse practitioners are not considered physicians as defined under FECA). *See also W.C.*, Docket No. 15-1280 issued November 13, 2015); *R.W.*, Docket No. 14-1890 (issued February 11, 2015).

[14] *D.D.*, 57 ECAB 734 (2006).

[15] *G.W.*, Docket No. 16-0032 (issued August 15, 2016).

[16] 5 U.S.C. § 8128(a).

[17] 20 C.F.R. § 10.606(b)(3).

[18] *Id.* at § 10.608(b).

sufficient evidence to establish causal relationship. This is a medical issue. In support of her reconsideration request, appellant submitted a new note by Dr. Go's physician assistant. Physician assistants are not considered physicians as defined under FECA.[19] Because this report has no probative value, it does not constitute relevant and pertinent new evidence.[20]

Accordingly, as appellant has not met any of the criteria warranting reopening her claim for further merit review, pursuant to section 8128(a) of FECA and 20 C.F.R. § 10.608, OWCP properly denied appellant's request for reconsideration of the merits of her claim.

CONCLUSION

The Board finds that appellant has not established an injury causally related to the accepted July 13, 2016 employment incident. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 25 and September 13, 2016 are affirmed.

Issued: June 12, 2017
Washington, DC

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

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

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

[19] *See* 5 U.S.C. § 8101(2).

[20] *R.M.*, Docket No. 16-1845 (issued March 6, 2017); *see also David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).