United States Department of Labor
Employees' Compensation Appeals Board

S.G., Appellant	)	
	)	**Docket No. 16-1716**
and	)	**Issued: March 3, 2017**
DEPARTMENT OF THE ARMY, TRAINING & DOCTRINE COMMAND, Fort Knox, KY, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 24, 2016 appellant filed a timely appeal from the April 28 and June 15, 2016 merit decisions 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 has met her burden of proof to establish that she sustained a back injury causally related to a March 1, 2016 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 2, 2016 appellant, then a 53-year old education and training specialist, filed a traumatic injury claim (Form CA-1) alleging that on March 1, 2016 she suffered a lower back injury when her chair slipped and she fell to the floor.

By letter dated March 21, 2016, OWCP informed appellant that specific evidence, including medical evidence, was necessary to support her claim, and afforded appellant 30 days to submit this information.

In response, appellant submitted a March 3, 2016 note, wherein Ellen McLaurin, a nurse practitioner (NP), indicated that appellant was off work for one more week and may return to work on March 11, 2016.

By decision dated April 28, 2016, OWCP denied appellant's claim. It determined that she did not submit any medical evidence that contained a diagnosis. OWCP further stated that appellant had not submitted medical evidence establishing causal relationship between a diagnosis and the accepted incident of her federal employment.

On May 18, 2016 appellant requested reconsideration. She submitted new evidence with her reconsideration request.

In a March 1, 2016 report, Dr. Daniel Gordon, a Board-certified internist, interpreted an x-ray of appellant's lumbar spine as evincing transition vertebral elements and mild degenerative changes within the lower lumbar spine. He further noted that phleboliths are seen within the pelvis.

In March 1 and 3, 2016 reports, NP McLaurin listed appellant's diagnoses as unspecified fall, strain of the muscle fascia and tendon of the lower back, low back strain, pain in the left and right hip, cramp and spasm. She noted appellant's complaints and her description of the employment incident. In a May 9, 2016 report, NP McLaurin indicated that she has been providing medical care to appellant for three years. She noted that appellant was initially treated for low back pain, and was last treated for this in March. NP McLaurin described appellant's employment incident, and noted that she received extensive treatment including x-rays of her lumbar spine, hips and pelvis, a Torodol injection, and home pain medication. She noted that appellant was given an orthopedic referral. NP McLaurin stated that due to her injuries, appellant was unable to work at that time.

In a May 12, 2016 statement, appellant indicated that she was injured on the job on March 1, 2016 when the back of her legs hit her chair, it rolled backward, and she fell onto the floor. She explained that she remained at work until 1:00 p.m., but the pain only increased and sitting aggravated it. Appellant noted that she went to her doctor who placed her on pain and inflammation medication and bed rest, and that she returned to duty on March 10, 2016.

In a June 15, 2016 decision, OWCP denied modification of its prior decision. It noted that the new evidence submitted on reconsideration did not provide a diagnosis of a medical condition, therefore fact of injury was not established.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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 caused 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.[3] 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]

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. 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] 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.[6]

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.[7] 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.[8]

ANALYSIS

OWCP accepted that appellant established that the employment incident occurred as alleged on March 1, 2016. However, it denied her claim, finding that she failed to submit medical evidence establishing a medical diagnosis from a physician and that the diagnosed condition was causally related to the accepted employment incident.

The Board notes that Dr. Gordon interpreted appellant's x-rays of her lumbar spine as demonstrating transition vertebral element and mild degenerative changes within the lower

[2] *Id.*

[3] *Joe D. Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

[6] *Id.*

[7] *I.J.*, 59 ECAB 408 (2008); *supra* note 4.

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

lumbar spine. Dr. Gordon also noted that phleboliths were seen within the pelvis. This x-ray is sufficient to show a medical diagnosis.

The Board finds, however, that appellant has not met her burden of proof to establish that her diagnosed medical condition was causally related to the accepted employment incident. Appellant has submitted no medical evidence establishing causal relationship. Dr. Gordon interpreted appellant's x-rays but he failed to address whether his employment incident caused the conditions found on the x-ray. Therefore his opinion is of diminished probative value on the issue of causal relationship.[9] Furthermore, NP McLaurin's opinions are of no probative value as nurse practitioners are not considered physicians as defined under FECA.[10]

An award of compensation may not be based on surmise, conjecture or speculation.[11] To support a claim for compensation, the evidence should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.[12] No physician provided a rationalized medical opinion explaining a causal relationship between appellant's accepted employment incident and a medical diagnosis. Appellant, therefore, did not meet her burden of proof to establish an injury in the performance of duty on March 1, 2016.

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 established that she sustained a back injury causally related to the March 1, 2016 employment incident.

[9] *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

[10] 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). *See also L.D.*, 59 ECAB 648 (2008) (an NP is not considered a physician under FECA).

[11] *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

[12] *K.H.*, Docket No. 15-1809 (issued January 7, 2016).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 15 and April 28, 2016 are affirmed, as modified.

Issued: March 3, 2017
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