United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 17-0362**
	)	**Issued: March 9, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Mahopac, NY, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 6, 2016 appellant filed a timely appeal from a November 3, 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 this case.

ISSUE

The issue is whether appellant met her burden of proof to establish an injury causally related to an August 22, 2016 employment incident.

FACTUAL HISTORY

On August 22, 2016 appellant, then a 57-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging she injured her back that day "lifting a parcel." She stopped work on August 22, 2016, and resumed her regular, full-time duties on August 29, 2016.

[1] 5 U.S.C. § 8101 *et seq.*

Jennifer Miano, a nurse practitioner (FNP-BC), examined appellant on August 22, 2016 and reported (Form CA-16) that she "was lifting [and] had pain to lower back." Appellant received a diagnosis of lower back muscle strain. Ms. Miano also completed a duty status report (Form CA-17), which indicated that appellant had been advised she could resume her regular duties on August 28, 2016.

In a letter dated September 26, 2016, OWCP requested that appellant submit additional factual and medical evidence in support of her claim, including a narrative medical report from a physician that contained detailed findings, a specific diagnosis, and the physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury.

OWCP subsequently received an August 22, 2016 lumbosacral x-ray that revealed spondylosis and degenerative disc disease at L5-S1. The radiologist's impression was chronic osteoarthritic and degenerative changes. Additionally, OWCP received Ms. Miano's August 22, 2016 urgent care treatment notes, which also noted a diagnosis of lower back muscle strain. The reported mechanism of injury was "heavy lifting."

In a report dated August 30, 2016, Dr. Barry I. Krosser, a Board-certified orthopedic surgeon, indicated that he had not seen appellant in over four years. He noted that appellant reported that she worked as a postal worker and that she "keeps having injuries." Appellant complained of ongoing back pain. Dr. Krosser advised that a magnetic resonance imaging (MRI) scan from April 26, 2016 showed a markedly degenerative disc at L4-5 with signs of a left-sided laminectomy at that level. He reported findings of his examination on that date and noted that appellant had been considering surgery "for a number of years." Dr. Krosser recommended that appellant undergo a lumbar decompression and fusion at L4-5.

On September 27, 2016 Dr. Krosser noted that appellant returned for evaluation and reported that she did not have "back pain anymore." He reported examination findings and diagnosed "resolved lumbar sprain and resolving lumbar radiculopathy in patient with lumbar [degenerative joint disease]."

By decision dated November 3, 2016, OWCP denied appellant's claim for a work-related injury on August 22, 2016. It accepted the August 22, 2016 employment incident but found that she had not met her burden of proof to submit probative medical evidence establishing that her diagnosed lumbar condition was causally related to the accepted incident.

LEGAL PRECEDENT

A claimant seeking benefits under FECA 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, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[2]

[2] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[3] The second component is whether the employment incident caused a personal injury.[4] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[5]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[6] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[7]

ANALYSIS

Appellant filed a traumatic injury claim (Form CA-1) alleging a back injury due to lifting a parcel at work on August 22, 2016. By decision dated November 3, 2016, OWCP denied appellant's claim for a work-related injury on August 22, 2016 because she had not submitted medical evidence establishing a causal relationship between the diagnosed lumbar condition and the accepted employment incident.

The Board finds that appellant failed to meet her burden of proof to establish a work-related injury on August 22, 2016. Appellant did not submit sufficient probative medical evidence to establish such an injury.

In support of her claim, appellant submitted an August 30, 2016 report in which Dr. Krosser, an attending physician, advised that an April 26, 2016 MRI scan showed a markedly degenerative disc at L4-5 with signs of a left-sided laminectomy at that level. Dr. Krosser recommended that appellant undergo a lumbar decompression and fusion at L4-5. On September 27, 2016 he diagnosed "resolved lumbar sprain and resolving lumbar radiculopathy in patient with lumbar [degenerative joint disease]."

[3] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[5] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[6] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[7] *K.W.*, 59 ECAB 271, 279 (2007). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

The Board finds that the submission of these reports would not establish appellant's claim for a work-related August 22, 2016 injury because Dr. Krosser did not provide an opinion that appellant sustained an injury at work on that date as she alleged. The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[8] In his August 30, 2016 report, Dr. Krosser noted that appellant reported that she worked as a postal worker and that she "keeps having injuries." He did not mention appellant's claim that she sustained injury on August 22, 2016 by lifting a parcel at work. Dr. Krosser did not provide any opinion that appellant's back condition or need for surgery were related to the implicated work factor. Although he diagnosed "resolved lumbar sprain" in his September 27, 2016 report, he did not provide any opinion on the cause of this lumbar sprain. In fact, Dr. Krosser suggested that appellant's low back problems were due to her preexisting chronic degenerative joint disease.

Appellant submitted three reports dated August 22, 2016 which were produced by her attending family nurse practitioner. These reports do not constitute medical evidence with probative value to support her claim for a work-related August 22, 2016 injury. Under FECA, the report of a nonphysician, including a nurse practitioner, does not constitute probative medical evidence.[9]

For these reasons, appellant has failed to establish a work-related injury on August 22, 2016.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish an injury causally related to an August 22, 2016 employment incident.

[8] *See Charles H. Tomaszewski*, 39 ECAB 461 (1988).

[9] *R.S.*, Docket No. 16-1303 (issued December 2, 2016); *L.L.*, Docket No. 13-829 (issued August 20, 2013).

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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