United States Department of Labor
Employees' Compensation Appeals Board

D.W., Appellant	)	
and	)	**Docket No. 17-1151**
	)	**Issued: November 7, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Pennsville, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
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 May 4, 2017 appellant, through counsel, filed a timely appeal from a January 19, 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 over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish a back injury causally related to the accepted March 19, 2015 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 April 14, 2015 appellant, then a 48-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on March 19, 2015 she experienced low back pain radiating into her legs after lifting filled banker boxes. She stopped work on April 8, 2015.

OWCP previously accepted that appellant sustained a displaced lumbar and intervertebral disc as a result of a November 3, 2005 work injury, assigned File No. xxxxxx565. Under that claim, she returned to her usual work duties on March 12, 2007.[3]

A September 6, 2006 magnetic resonance imaging (MRI) scan showed an unchanged L5-S1 disc herniation. An April 13, 2015 MRI scan revealed disc desiccation with an annual disc bulge at L5-S1, a cervical herniation with impingement on the thecal sac and S1 nerve roots, and left foramen narrowing.

Dr. John A. Gagliardi, a chiropractor, asserted in an April 7, 2015 disability certificate that appellant was totally disabled until April 21, 2015. On April 20, 2015 Dr. John R. Amrien, who specializes in family medicine, found that she could resume work on May 20, 2015.

Appellant, in an undated statement received by OWCP on April 23, 2015, related that she felt a pull in her back getting rid of filled banker boxes. She asked her supervisor for help since her back hurt. Appellant continued working because she believed that she had only sprained her back, but the continued work "seemed to aggravate it more."

In a return to work slip, Dr. Amrien indicated that appellant could resume work on June 2, 2015.

On June 12, 2015 OWCP advised appellant that it had initially paid a limited amount of medical expenses as her injury was uncontroverted and seemed minor. It was now adjudicating the merits of her claim. OWCP requested that appellant submit additional factual and medical evidence, including a report from her attending physician addressing the causal relationship between a medical condition and the identified work incident.

Dr. Amrien, on June 30, 2015, advised that appellant was unable to work pending surgery.

In response to OWCP's request for additional information, appellant related that on March 19, 2015 she experienced pain in her lower back radiating into her legs, but continued working with medication and therapy. She had a prior history of back and shoulder pain which lessened after chiropractic adjustments. Appellant specified that she was claiming a traumatic injury.

On July 9, 2015 Dr. Amrien indicated that he initially treated appellant on March 27, 2015 "for low back pain which occurred while lifting a heavy box off the floor at work." He noted that a lumbar spine MRI scan showed a disc herniation at L5-S1. Dr. Amrien related, "It is

[3] OWCP File No. xxxxxx565 is not before the Board on the present appeal.

my opinion that the lifting injury at work caused the L5-S1 disc herniation in [appellant]." He recommended surgery.

By decision dated July 15, 2015, OWCP denied appellant's traumatic injury claim. It found that the medical evidence of record was insufficient to establish a diagnosed condition as a result of the accepted work incident. Thus, fact of injury was not established.

In a report dated June 1, 2015, received by OWCP on July 31, 2015, Dr. William C. Welch, a Board-certified neurosurgeon, noted that appellant had a history of lumbar radiculopathy. He reviewed her current complaints of low back pain radiating into the right more than left extremity beginning March 2015 when she "was lifting a box of magazines off the floor into a hamper to take to [the] dumpster." Dr. Welch diagnosed right sciatica from the S1 nerve root due to a disc rupture at L5-S1 on the right. He recommended a discectomy at L5-S1 on the right.

On September 28, 2015 Dr. Amrien discussed the March 27, 2015 work incident and the medical treatment received by appellant subsequent to the incident. He related, "It is my medical opinion, within a reasonable amount of medical certainty, that there is a direct cause and effect between [appellant's] back injury and her bending over and lifting heavy boxes off the floor at work on March 19, 2015. There are no other contributing factors." Dr. Amrien indicated that she required surgery.

Appellant, on October 19, 2015, requested reconsideration. She submitted an undated statement from her supervisor, who advised that appellant had requested assistance on March 19, 2015 due to back pain.

By decision dated January 12, 2016, OWCP denied modification of its July 15, 2015 decision. It noted that appellant had a prior history of an L5-S1 herniation. OWCP found that she had not submitted medical evidence based on a complete medical history addressing causation.

In a December 3, 2015 report, received by OWCP on March 3, 2016, Dr. Welch obtained a history of back pain radiating into her left leg and foot after a March 2015 work incident. He diagnosed "a history of lumbar radiculopathy in the setting of L5-S1 disc" and recommended a left L5-S1 discectomy.

On January 8, 2016 Dr. Welch performed a left L5 hemilaminectomy with partial facetectomy and extensive foraminotomies at L5 and S1. In a February 4, 2016 discharge summary, he noted that appellant had a history of an L4 nucleoplasty in 2004. Dr. Welch indicated that her symptoms of low back pain with left more than right leg pain began after a March 2015 work incident.

In a March 28, 2016 duty status report (Form CA-17), Dr. Amrien diagnosed a herniated disc and checked the box marked "yes" that the history of injury corresponded to "lifting full banker boxes from the floor into hampers." He provided work restrictions.

Electrodiagnostic testing performed April 13, 2016 revealed S1 radiculopathy greater on the left side.

Appellant, on December 19, 2016 requested reconsideration. She related that on November 3, 2005 she had herniated her L5-S1 disc at work, assigned File No. xxxxxx565. Appellant returned to her usual employment in 2007 after surgery, but continued to receive periodic chiropractic treatment. She related that she worked without limitations until March 19, 2015 when she lifted full banker boxes off the floor.

By decision dated January 19, 2017, OWCP denied modification of its January 12, 2016 decision. It determined that appellant had not submitted rationalized medical evidence supporting that she sustained a diagnosed condition due to the March 19, 2015 work incident.

On appeal counsel asserts that OWCP had accepted lumbar disc displacement on November 3, 2005 under File No. xxxxxx565 and authorized surgery in November 2006, following which she returned to a modified position. He maintained that she submitted sufficient factual and medical evidence to establish an aggravation of her preexisting low back condition on March 19, 2015. Counsel notes that the employing establishment did not controvert the claim and that appellant's supervisor submitted a statement confirming that she sustained low back pain on March 19, 2015.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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.[5] 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.[6]

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.[7] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.[8] An employee may establish that the employment

[4] 5 U.S.C. § 8101 *et seq.*

[5] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[6] *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[7] *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

[8] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

incident occurred as alleged, but fail to show that her disability and/or condition relates to the employment incident.[9]

ANALYSIS

Appellant alleged an injury to her back on March 19, 2015 after lifting full banker boxes while in the performance of duty. She has established that the work incident occurred at the time, place, and in the manner alleged. The issue, consequently, is whether the medical evidence of record establishes an injury as a result of this incident.

The Board finds that appellant has not established that the March 19, 2015 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.[10]

Appellant provided evidence from Dr. Amrien. Dr. Amrien, in a July 9, 2015 report, discussed his treatment of appellant beginning March 27, 2015 for pain in her low back after she lifted a heavy box at work. He opined that the lifting resulted in a disc herniation at L5-S1. On September 28, 2015 Dr. Amrien again reviewed the history of the March 27, 2015 incident and advised that lifting the boxes off the floor on March 19, 2015 directly caused appellant's back injury. He noted that there were no other "contributing factors." Appellant, however, had a prior history of a disc herniation at L5-S1. In order to establish causal relationship, a physician's opinion must be based on a complete and accurate factual and medical background and must be supported by medical rationale.[11] Dr. Amrien did not demonstrate knowledge of appellant's prior disc herniation at L5-S1 and thus did not rely on a complete history in reaching his conclusion. Therefore, consequently, his report is of diminished probative value.[12] Further, he did not provide rationale for his causation finding. Medical evidence that provides a conclusion, but does not offer any rationalized medical explanation regarding the cause of an employee's condition, is of limited probative value on the issue of causal relationship.[13]

Dr. Amrien, in a form report dated March 28, 2016, diagnosed a herniated disc and indicated by a checkmark in a box that the history of injury corresponded to appellant experiencing low back pain after lifting boxes. He provided work restrictions. The Board has held, however, that an opinion on causal relationship which consists only of a physician checking a box marked "yes" to a medical form question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[14] Other reports

[9] *Id.*

[10] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

[11] *See Roger Dingess*, 47 ECAB 123 (1995).

[12] *See Joseph M. Popp*, 48 ECAB 624 (1997).

[13] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[14] *Deborah L. Beatty*, 54 ECAB 334 (2003) (the checking of a box "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship).

from Dr. Amrien are insufficient to establish the claim as they do not address the cause of appellant's condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship[15]

On June 1, 2015 Dr. Welch evaluated appellant for low back pain with radiculopathy into the right more than left lower extremity with symptoms beginning after she lifted a box of magazines at work in March 2015. He noted that she had a history of lumbar radiculopathy. Dr. Welch diagnosed sciatica on the right from the S1 nerve root as a result of a right L5-S1 ruptured disc. While he described the March 2015 lifting incident, he did not specifically relate the L5-S1 disc herniation with sciatica to appellant's employment activities in March 2015 and thus his opinion is insufficient to meet her burden of proof.[16]

On December 3, 2015 Dr. Welch discussed appellant's symptoms of back pain radiating into the left lower extremity after a March 2015 work injury. He diagnosed a history of lumbar radiculopathy in the L5-S1 disc and recommended surgery, which he performed on January 8, 2016. In the discharge summary following surgery, Dr. Welch indicated that appellant's symptoms of low back pain with radiculopathy began after a March 2015 employment injury. The Board has held, however, that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.[17] Dr. Welch did not specifically attribute the L5-S1 radiculopathy to the March 19, 2015 work injury or provide a reasoned opinion regarding how the March 19, 2015 work incident caused the diagnosed condition, and thus his report is of little probative value.[18]

Appellant submitted disability certificates from a chiropractor, Dr. Gagliardi. Section 8101(2) of FECA, however, provides that 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…."[19] Dr. Gagliardi did not diagnose a subluxation as demonstrated by x-ray, he is not considered a "physician" as defined under FECA and his report is of no probative value.[20]

On appeal counsel contends that the factual and medical evidence establishes that appellant sustained an aggravation of her preexisting low back condition on March 19, 2015, noting that OWCP previously accepted a lumbar disc displacement on November 3, 2005 under File No. xxxxxx565. As discussed, however, appellant did not submit medical evidence based

[15] *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

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

[17] *D.E.*, 58 ECAB 448 (2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

[18] *See W.A.*, Docket No. 16-1544 (issued May 10, 2017).

[19] 5 U.S.C. § 8101(2); *see also Michelle Salazar*, 54 ECAB 523 (2003).

[20] *Isabelle Mitchell*, 55 ECAB 623 (2004).

on a complete and accurate medical history sufficient to demonstrate a causal connection between the March 19, 2015 work incident and her claimed back condition.[21]

Counsel also asserts that the employing establishment did not controvert the claim and that appellant's supervisor submitted a statement confirming that she sustained low back pain on March 19, 2015. As discussed, however, appellant has established that the March 19, 2015 incident occurred as alleged. The relevant issue is whether the medical evidence is sufficient to establish an injury due to the accepted employment incident, which it does not.

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish a back injury causally related to the accepted March 19, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 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

[21] *See S.H.*, Docket No. 16-1227 (issued February 9, 2017).