

ISSUE

The issue is whether appellant has established an injury causally related to the accepted March 31, 2013 employment incident.

FACTUAL HISTORY

On April 8, 2013 appellant, then a 38-year-old mail handler, filed a recurrence of disability claim (Form CA-2a) alleging that on March 31, 2013 she felt a sharp pain and stiffness in her neck while opening bags. She reported the date of the original injury as August 30, 2007.³ Appellant indicated that she had recovered from the August 30, 2007 injury, but had sustained another injury on March 31, 2013.

In an April 4, 2013 letter, appellant noted that on March 29, 2013 she worked on a sorter machine, and loaded tubs and on March 30, 2013 she worked on the sorting machine. On March 31, 2013 appellant was opening bags and felt a sharp pain in her back and stiffness in her neck.

By letter dated April 25, 2013, OWCP indicated that the claim would be developed as a new injury. It noted that appellant's claim indicated that she was claiming a new traumatic injury on March 31, 2013.

Appellant submitted a form report dated April 1, 2013 from Dr. Theodore Xenos, a chiropractor. Dr. Xenos diagnosed exacerbation of cervical and lumbar radiculopathy, and indicated that appellant was disabled.

In a May 10, 2013 letter, OWCP advised appellant of the evidence needed to support her claim. It noted that a chiropractor is considered a physician only if diagnosing a subluxation as demonstrated by x-ray. Appellant was afforded 30 days to submit the necessary medical evidence. She did not respond within the time allotted.

By decision dated June 14, 2013, OWCP denied appellant's claim for compensation. It found that she had established that the incident occurred, as alleged, but that she had not submitted probative medical evidence of a diagnosed condition causally related to the accepted incident.

On October 1, 2013 appellant requested reconsideration. She submitted an August 19, 2013 report from Dr. R.C. Krishna, a Board-certified neurologist. Dr. Krishna provided a history that appellant was involved in a work accident on March 31, 2013, and was unloading mail for three consecutive days. He wrote that appellant presented with neck and low back pain, radiating into her upper and lower extremities. Dr. Krishna reviewed results of diagnostic

³ Appellant had a prior claim for a traumatic injury on August 30, 2007 accepted for cervical and lumbar strains, assigned OWCP File No. xxxxxx761.

studies and provided results on examination.⁴ He reported that appellant's clinical features were consistent with exacerbation of cervical and lumbar injuries, multilevel cervical and lumbosacral disc bulges, herniations resulting in radiculopathy, and cervical and lumbar ligamentous instability. Dr. Krishna found that appellant was totally disabled and opined that "the incident that the patient described is the competent producing medical cause of the injury or illness. The patient's complaints are consistent with the history of injury or illness. The history of the illness and injury is consistent with the objective findings."

Dr. Krishna also recommended an electromyogram/nerve conduction velocity (EMG/NCV) study to rule out radiculopathy or nerve dysfunction. In a report dated August 27, 2013, Dr. Anamilka Jain, a Board-certified physiatrist, reported the EMG/NCV showed left C5-6 radiculopathy.

Appellant submitted a narrative report from Dr. Xenos dated April 1, 2013. Dr. Xenos provided a history that appellant had been stacking and lifting bags of mail. He provided results on examination and diagnosed cervical, thoracic, and lumbar subluxation complex, aggravation of previous ligament instability, aggravation of previous disc herniations in the lumbar and cervical spine, and aggravation of previous cervical and lumbar radiculopathy. Dr. Xenos opined that the events of March 31, 2013 were significant enough to aggravate and potentially reinjure previous medical conditions.

In a report dated October 1, 2013, Dr. Xenos provided results on examination and provided diagnoses that included multiple vertebral subluxation complex of the cervical thoracic and lumbosacral spine. He also diagnosed cervical disc displacement, neck sprain, brachial neuritis or radiculitis, lumbar sprain, and carpal tunnel syndrome. Dr. Xenos opined that appellant was disabled from work.

By decision dated December 24, 2013, OWCP reviewed the merits of appellant's claim, but denied modification.

On April 2, 2014 appellant again requested reconsideration of her claim. She submitted a March 5, 2014 report from Dr. Krishna. Dr. Krishna provided a history describing appellant's work duties from March 29 to 31, 2013. He provided results on examination. Dr. Krishna again wrote that the incident that the patient described was the competent-producing medical cause of the injury or illness. He also opined that appellant's complaints were consistent with the history of injury or illness, and the history was consistent with the objective findings.

Appellant also submitted additional medical evidence from Dr. Xenos and another chiropractor, Dr. Gabriel Nadel. In reports dated January 21, February 10 and 20, and March 24, 2014, the diagnoses again included multiple vertebral subluxation complex of the cervical thoracic and lumbosacral spine.

⁴ The record contains a June 5, 2013 magnetic resonance imaging (MRI) scan of the lumbar spine, finding disc bulges at L4-5 and L5-S1. A June 5, 2013 cervical MRI scan found multilevel disc bulges. The reports were prepared by Dr. Satish Chandra, a radiologist.

By decision dated June 30, 2014, OWCP reviewed the merits and denied modification. It found the additional medical evidence submitted was insufficient to establish causal relationship.

On December 3, 2014 appellant again requested reconsideration. She submitted a November 13, 2014 note from Dr. Krishna.⁵ Dr. Krishna wrote that appellant was not hurt over a period of three days, but was injured on March 31, 2013. He opined that the incident that the patient described is the competent-producing medical cause of the injury or illness, and her complaints were consistent with the history of injury or illness. In a November 19, 2014 report, Dr. Krishna provided results on examination. He again wrote that the clinical features were consistent with exacerbation of cervical and lumbar injuries, multilevel cervical and lumbosacral disc bulges, herniations resulting in radiculopathy, and cervical and lumbar ligamentous instability. Dr. Krishna opined that, based on the history and his review of medical records, the symptoms and injuries outlined above were causally related to the March 31, 2013 employment incident. Appellant also submitted October 17, 20, and 30, 2014 reports from Dr. Xerxes Oshider, another chiropractor, who diagnosed multiple vertebral subluxations of the cervical, thoracic, or lumbar spines. He concluded that appellant was disabled from work due to the March 31, 2013 employment incident.

Additionally, appellant submitted November 6 and 26, and December 3 and 10, 2014 reports from Dr. Xenos, who diagnosed multiple vertebral subluxations. Dr. Xenos too concluded that appellant remained disabled from work due to the March 31, 2013 employment incident.

By decision dated February 19, 2015, OWCP reviewed the merits of the claim, but denied modification. It reviewed the medical evidence and found it was insufficient to establish the claim.

On February 16, 2016 appellant again requested reconsideration. She submitted additional reports from Dr. Krishna dated January 21, August 19, and October 21, 2015 and January 20, 2016. In the January 20, 2016 report, Dr. Krishna again wrote that the symptoms and diagnosed conditions sustained by appellant were causally related to the March 31, 2013 employment incident, and that appellant was totally disabled. Appellant also submitted additional chiropractor reports.

By decision dated May 16, 2016, OWCP reviewed the merits of the claim, but denied modification. It found the medical evidence of record insufficient to establish the claim for compensation. OWCP explained that the reports from Dr. Krishna lacked medical rationale and therefore did not establish causal relationship.

On November 7, 2016 appellant, through counsel, again requested reconsideration. The medical evidence submitted included a September 7, 2016 report from Dr. Krishna, who provided results on examination. Dr. Krishna repeated comments in earlier reports. Appellant also submitted an April 27, 2016 report from Dr. Xenos. Dr. Xenos discussed a number of orthopedic tests performed, such as Spurling's test and straight leg raising. In a report dated November 2, 2016, Dr. Gonzalo Corridori, a chiropractor, provided results on examination and

⁵ The note was included as an addendum to an April 4, 2013 report.

diagnosed multiple vertebral subluxations of the cervical, lumbar, and thoracic spines. He opined that the mechanism of injury as described by appellant was the competent cause of the reported injuries. Dr. Corridori did not discuss x-ray results.

By decision dated January 17, 2017, OWCP reviewed the merits of the claim, but denied modification. It again found that the medical evidence of record did not establish the claim for compensation. OWCP noted that Dr. Krishna had not explained, with supporting medical rationale, how the employment incident caused a diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish that he or she sustained an injury while in the performance of duty.⁷ 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, which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by rationalized medical evidence.⁸

Rationalized medical opinion evidence is medical evidence that includes an opinion based on a complete factual and medical background of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁹

ANALYSIS

Appellant has alleged that she sustained an injury on March 31, 2013, when she was opening bags of mail and felt a sharp pain and stiffness in neck. OWCP has accepted that the employment incident occurred as alleged. The Board finds, however, that appellant has not established that the diagnosed conditions were causally related to the accepted employment incident.

In reviewing the medical evidence, the Board notes that appellant has submitted numerous reports from Drs. Xenos, Oshider, and Corridori, chiropractors. As OWCP advised appellant, under FECA, a chiropractor is a physician only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a

⁶ *Supra* note 2.

⁷ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁸ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁹ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

subluxation as demonstrated by x-ray to exist.¹⁰ While the chiropractor reports include diagnoses of multiple vertebral subluxation complex of the cervical thoracic and lumbosacral spine, they do not reference any x-rays. The chiropractor must not only diagnose a subluxation, but establish that the diagnosis was based on x-ray evidence.¹¹ The Board, therefore, finds the evidence from Drs. Xenos, Oshider, and Corridori are of no probative value to the issue presented.

Appellant also submitted numerous reports from Dr. Krishna, but it is not the number of reports, but the care of analysis manifested and the medical rationale provided in the reports that determines the probative value of the evidence.¹² Dr. Krishna provided several diagnoses: exacerbation of cervical and lumbar injuries; multilevel cervical and lumbosacral disc bulges; herniations resulting in radiculopathy; and cervical and lumbar ligamentous instability. To establish causal relationship between a diagnosed condition and the March 31, 2013 employment incident, the physician must explain how the employment incident affected appellant's neck or back.¹³ If there is an aggravation, an opinion with respect to aggravation must differentiate between the effects of the work-related injury or disease and the preexisting condition.¹⁴ The Board has held that the physician must clearly explain the nature and extent of any aggravation, including whether temporary or permanent.¹⁵ While Dr. Krishna opined that the employment incident was a competent cause of the diagnosed conditions, he did not offer a rationalized medical explanation as to how physiologically opening bags of mail would have caused the various diagnosed conditions. Without explaining how physiologically the movements involved in the employment incident caused or contributed to the diagnosed conditions, Dr. Krishna's opinion is of limited probative value.¹⁶

The Board accordingly finds that appellant has not established an injury causally related to a March 31, 2013 employment incident. The record does not contain a rationalized medical opinion based on a complete background. It is appellant's burden of proof, and the Board finds that appellant has not met her burden of proof.

On appeal counsel argues that relevant medical evidence was provided. For the reasons discussed, the Board finds that the evidence of record is insufficient to establish the claim.

¹⁰ 5 U.S.C. § 8101(2).

¹¹ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

¹² *See Connie Johns*, 44 ECAB 560 (1993).

¹³ The physician should explain how the employment incident, and the forces and stresses of the incident, affected the claimant and caused or aggravated a specific condition. *See E.G.*, Docket No. 16-0242 (issued October 14, 2016)

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013).

¹⁵ *See R.H.*, Docket No. 15-1785 (issued January 29, 2016).

¹⁶ *See T.G.*, Docket No. 14-751 (issued October 20, 2014).

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 an injury causally related to the accepted March 31, 2013 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 17, 2017 is affirmed.

Issued: September 7, 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