United States Department of Labor
Employees' Compensation Appeals Board

C.W., Appellant	)	
and	)	**Docket No. 17-1636**
	)	**Issued: April 25, 2018**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORATION & SECURITY ADMINISTRATION, Dulles, VA, Employer	)	

Appearances:
Michael A. Kernback, Esq., for appellant[1]
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 1, 2017 appellant, through counsel, filed a timely appeal from a May 23, 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.

[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.*

ISSUES

The issues are: (1) whether appellant has established that the acceptance of her claim should be expanded to include additional conditions causally related to her September 3, 2013 employment injury; and (2) whether OWCP abused its discretion in denying authorization for physical therapy after January 31, 2016.

FACTUAL HISTORY

On September 11, 2013 appellant, then a 51-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that, on September 3, 2013, she strained her lower back when lifting a passenger out of a wheelchair in the performance of duty. She worked limited duty from September 24, 2013 to May 1, 2014. OWCP accepted the claim for lumbar sprain and paid appellant intermittent wage-loss compensation for lost time from work due to medical and physical therapy appointments.

Dr. Robert G. Squillante, a Board-certified orthopedic surgeon, treated appellant in 2013 and 2014 for lumbar sprain and referred her for physical therapy. In a report dated November 5, 2013, he noted that she had lumbar pain after a September 6, 2013 work injury with "no radicular pain, numbness, or weakness." Dr. Squillante diagnosed lumbar sprain. On January 28, 2014 he noted that appellant complained of intermittent pain in her lower extremity, particularly with standing, and recommended diagnostic studies.

A March 5, 2014 magnetic resonance imaging (MRI) scan revealed mild facet degenerative joint disease and L4-5 degenerative disc disease without canal or foraminal narrowing. Dr. Squillante reviewed the March 5, 2014 MRI scan on March 11, 2014 and found that it showed mild degenerative changes consistent with lumbar sprain. In a May 1, 2014 report, he discussed appellant's lumbar pain symptoms and found that she had good range of motion with a normal neurological examination. Dr. Squillante informed her that she should stop physical therapy and opined that she could return to work "with the exception of lifting 50 pounds." He released appellant to return as needed.

On May 23, 2014 Dr. Christopher R. Good, a Board-certified orthopedic surgeon, discussed appellant's history of back pain after helping a passenger out of a wheelchair.[3] He diagnosed lumbar spondylosis without myelopathy, lumbar disc degeneration, lumbar myofascial pain syndrome, lumbar facet syndrome, and low back pain. Dr. Good noted that appellant had L4-5 disc degeneration "with overall well[-]maintained structure." He referred her for physical therapy.

Appellant received physical therapy in 2014 and 2015.

Dr. Good, in a December 4, 2015 report, evaluated appellant for low back pain on the left side that had continued since a 2013 work injury. On examination he found a negative straight leg raise without tenderness of the spine. Dr. Good diagnosed lumbar spondylosis without myelopathy

[3] Dr. Good continued to provide progress reports noting his treatment of appellant.

or radiculopathy, low back pain, myalgia, and sacroiliitis. He recommended additional physical therapy for "continued core strengthening and stabilization."

By letter dated February 1, 2016, OWCP noted that it had authorized physical therapy from December 13, 2013 to January 31, 2016. It informed appellant that, prior to authorization of additional therapy, she should submit a medical report addressing the goals of physical therapy and the diagnosis requiring therapy.

In a separate February 1, 2016 letter, OWCP notified appellant that the evidence of record was insufficient to establish that she had spondylosis due to her accepted work injury. It requested that she submit a physician's report discussing any preexisting conditions and addressing causal relationship between the work injury and the diagnosed condition.

In a February 12, 2016 report, Dr. Good discussed the September 3, 2013 work injury when appellant injured her back while helping a traveler in a wheelchair. A lumbar MRI scan study showed "mild disc disease at the L4-5 level." Dr. Good asserted that, while appellant was diagnosed with lumbar sprain, "[f]urther workup has revealed a more significant underlying structural diagnosis and, as such, the lumbar disc disease and spondylosis are appropriate codes for her…." Appellant's disc disease was mild and did not warrant surgery. Dr. Good recommended continued physical therapy and related, "I believe that [appellant's] current physical therapy is related back to the accident on September 2013. [Appellant] likely will continue to need some form of therapy and exercise over time in order to maintain her highest level of quality of life." In a progress report dated February 12, 2016, he provided findings on examination and diagnosed low back pain, unspecified myositis, lumbar spondylosis, lumbar disc degeneration, and obesity. Dr. Good recommended additional physical therapy.

By decision dated March 3, 2016, OWCP denied authorization for additional physical therapy. It found that the medical evidence of record was insufficient to show that it was medically necessary to treat the accepted work injury. By separate March 3, 2016 decision, OWCP denied appellant's request to expand the acceptance of her claim to include additional lumbar conditions.[4] It found that the medical evidence from Dr. Good failed to include rationale regarding how the additional diagnosis of spondylosis was causally related to the September 3, 2013 work injury.

Dr. Good, in a March 28, 2016 report, related that appellant had no spine problems until she assisted a passenger from a wheelchair on September 3, 2013. A lumbar sprain was diagnosed, but she did not improve. Diagnosed studies revealed "a relatively mild, but still significant structural issue at the L4/5 level" of lumbar spondylosis and lumbar disc disease. Dr. Good asserted that, while these conditions might have been present before the September 3, 2013 work injury, appellant did not have prior symptoms. He opined that the conditions were directly related to the work injury as she had no "symptoms before the injury and ongoing symptoms ever since that time. There has not been any significant period of time where her symptoms have been absent since the injury." Dr. Good advised that appellant improved with regular physical therapy and recommended continued therapy for "a significant period of time moving forward…."

[4] In a March 8, 2016 decision, OWCP denied appellant's claim for compensation for January 15, 2016 as she had not submitted medical evidence supporting that she obtained physical therapy treatment on that date.

In progress reports dated March 28 to October 16, 2016, Dr. Good described his treatment of appellant and provided findings on examination. In a February 13, 2017 progress report, he diagnosed lumbar spondylosis, low back pain, sacroiliitis, lumbar strain, and lumbar spinal instabilities. Dr. Good recommended additional diagnostic testing.

Appellant requested reconsideration on February 22, 2017.

On March 9, 2017 OWCP referred the case record to Dr. William Andrews, a Board-certified orthopedic surgeon, for review. In a report dated April 7, 2017, Dr. Andrews reviewed the medical record and opined that appellant could resume her usual employment. He recommended against further physical therapy.

OWCP, by letter dated April 12, 2017, referred appellant to Dr. Andrews for a second opinion examination. On May 2, 2017 Dr. Andrews discussed her history of an employment injury assisting a traveler out of a wheelchair. On examination he found a negative straight leg, pain in appellant's back "with no significant neurologic deficit in her legs," and "palpable spasm in her low back." Dr. Andrews advised that a March 31, 2017 lumbar MRI scan study was effectively unchanged from the February 11, 2017 MRI scan study and showed "some spondylosis, but no significant foraminal stenosis or central stenosis." He opined that appellant could return to her usual employment. Dr. Andrews found that she had no objective neurological findings although she had continued pain from the lumbar sprain and spasm. He additionally determined that she did not have employment-related lumbar disc disease and lumbar spondylosis based on the objective findings on her examinations. Dr. Andrews related, "[Appellant] did have lumbar disc disease and lumbar spondylosis, and then had a strain/sprain of the muscles superimposed on top of that." He recommended against additional physical therapy, noting that she had "excessive physical therapy and does not need any more physical therapy for her strain/sprain." In a work restriction evaluation (Form OWCP-5c) dated May 2, 2017, Dr. Andrews found that appellant could resume work without restrictions.

By decision dated May 23, 2017, OWCP denied modification of its March 3, 2016 decisions. It found that the medical evidence was insufficient to show that appellant's claim should be expanded to include spondylosis due to her work injury of September 3, 2013 or that she required further physical therapy.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim, including the fact that he or she 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 or specific condition for which compensation is claimed is causally related to the employment injury.[6]

[5] *Supra* note 2.

[6] *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[7] To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[8] 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.[9] The weight of 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.[10]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained lumbar sprain due to a September 3, 2013 employment injury. Appellant requested expansion of the acceptance of her claim to include lumbar degenerative disc disease and lumbar spondylosis.

Where a claimant alleges that a condition not accepted or approved by OWCP was due to appellant's employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.[11] The Board finds that appellant has not submitted sufficient medical evidence to establish additional claimed lumbar conditions, including degenerative disc disease or lumbar spondylosis, causally related to her work injury.

On May 2, 2017 Dr. Andrews, an OWCP referral physician, opined that appellant had no further objective evidence of the accepted lumbar sprain. He further related that she did not have lumbar disc disease or lumbar spondylosis based on the objective findings on her examinations. Dr. Andrews' opinion, which is rationalized and based on an accurate history of injury and thorough examination, constitutes the weight of the evidence and establishes that appellant has not met her burden of proof to establish that she sustained lumbar disc disease or lumbar spondylosis causally related to her accepted employment injury.[12]

The remaining evidence of record is insufficient to meet appellant's burden of proof to show that the acceptance of her claim should be expanded to include additional conditions. Dr. Squillante treated her for lumbar sprain following her September 3, 2013 work injury. He

[7] *See V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[8] *See M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[9] *See John W. Montoya*, 54 ECAB 306 (2003).

[10] *See H.H.*, Docket No. 16-0897 (issued September 21, 2016); *James Mack*, 43 ECAB 321 (1991).

[11] *Jaja K. Asaramo*, *supra* note 7.

[12] *See S.M.*, Docket No. 15-1511 (issued January 11, 2016).

noted that the lumbar MRI scan showed mild disc degenerative changes. On May 1, 2014 Dr. Squillante found that appellant had a normal finding on neurological examination and released her to return as needed.

On February 12, 2016 Dr. Good advised that appellant was initially diagnosed with a lumbar strain after her September 3, 2013 work injury, but that subsequent testing showed that the diagnoses of lumbar disc disease and spondylosis were more accurate. He noted that an MRI scan showed L4-5 mild disc disease. Dr. Good, on March 28, 2016, related that appellant had no spinal problems prior to her injury on September 3, 2013 when helping a passenger get out of a wheelchair. He noted that diagnostic studies revealed lumbar spondylosis and lumbar disc disease at L4 that was mild but "still significant." Dr. Good opined that the lumbar spondylosis and lumbar disc disease were causally related to the work injury as appellant was asymptomatic prior to the injury and had ongoing symptoms since the injury. He did not, however, provide any rationale for his finding, other than to note that she was asymptomatic prior to September 3, 2013. The Board has held 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.[13] Without rationale, opinion is of diminished probative value.[14]

Other reports from Dr. Good are of limited probative value with regard to claim expansion as they do not specifically address the cause of the diagnosed conditions. 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]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence.[16] Appellant failed to provide reasoned medical evidence demonstrating that she sustained lumbar disc disease and lumbar spondylosis causally related to the September 3, 2013 employment injury. Accordingly, the Board finds that she has failed to meet her burden of proof to establish expansion of the acceptance of her claim.[17]

LEGAL PRECEDENT -- ISSUE 2

Section 8103 of FECA[18] provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce

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

[14] *See Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

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

[16] *See E.P.*, Docket No. 16-0153 (issued August 25, 2016); *D.I.*, 59 ECAB 158 (2007).

[17] *See E.P., id.*

[18] *Supra* note 2.

the degree of the period of disability, or aid in lessening the amount of monthly compensation.[19] In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on its authority being that of reasonableness.[20] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[21] In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury.[22]

OWCP procedures provide:

> "For most orthopedic injuries, PT [physical therapy] services within the first 120 days after a traumatic injury are allowed without any prior authorization required, and it is also customary to automatically authorize PT postoperatively for orthopedic surgeries, usually for a period of 60 days postsurgery. If a request for therapy beyond these time frames is received, OWCP needs to review the file to determine whether further services should be authorized."[23]

To determine whether a claimant requires PT beyond the initial authorization period, OWCP reviews the record to determine whether the need for PT is due to the accepted work injury and whether the additional therapy is expected to yield functional improvement. Additionally, its procedures provide, "To authorize additional physical therapy for pain or to maintain function, OWCP should ensure that the pain is associated with measurable objective findings such as muscle spasm, atrophy and/or radiologic changes in joints, muscles or bones, or that pain has placed measurable limitations upon the claimant's physical activities."[24]

While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[25]

[19] 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

[20] *Joseph P. Hofmann*, 57 ECAB 456 (2006); *James R. Bell*, 52 ECAB 414 (2001).

[21] *Claudia L. Yantis*, 48 ECAB 495 (1997).

[22] *Cathy B. Mullin*, 51 ECAB 331 (2000).

[23] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Physical Therapy*, Chapter 2.810.19 (September 2010).

[24] *Id*.

[25] *See J.G.*, Docket No. 15-1784 (issued October 2, 2015); *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

ANALYSIS -- ISSUE 2

The Board finds that OWCP did not abuse its discretion in denying appellant's request for physical therapy. OWCP authorized physical therapy due to her accepted condition of lumbar sprain from December 13, 2013 to January 31, 2016.

Dr. Andrews, an OWCP referral physician, opined that appellant had no further objective findings due to her lumbar sprain, and further advised that she had no additional conditions resulting from the accepted September 3, 2013 employment injury. He found that she required no further physical therapy due to the accepted lumbar strain/sprain and that the therapy she had already undergone was "excessive." Dr. Andrew's opinion, which is detailed and well rationalized, represents the weight of the evidence and establishes that OWCP did not abuse its discretion in denying appellant's request for additional physical therapy.[26]

On December 4, 2015 Dr. Good noted that appellant had continued low back pain that began with a 2013 work injury. He diagnosed lumbar spondylosis without myelopathy or radiculopathy, low back pain, myalgia, and sacroiliitis. Dr. Good recommended additional physical therapy to strengthen and stabilize the core. He did not, however, explain how physical therapy would cure, provide relief, or reduce appellant's disability as a result of her accepted condition of lumbar sprain.[27] As discussed above, OWCP accepted only lumbar strain and she has not demonstrated that she sustained additional conditions as a result of the September 3, 2013 work injury.

In response to OWCP's request to submit medical evidence supporting the need for further physical therapy, Dr. Good, on February 12, 2016, diagnosed lumbar disc disease and spondylosis due to the accepted work injury and advised that appellant required physical therapy as a result of the injury. He opined that she would likely need indefinite therapy to maintain a high quality of life. In a March 28, 2016 progress report, Dr. Good again diagnosed lumbar spondylosis and lumbar disc disease and recommended further physical therapy so that appellant would continue to improve. He did not, however, address the specific functional goals of additional therapy or find the therapy necessary due to the accepted work injury.[28] Consequently, Dr. Good's opinion is of diminished probative value.

As noted, the only limitation on OWCP's authority to approve services provided under FECA is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[29] The Board finds that OWCP properly relied upon the opinion of Dr. Andrews, who provided a well-rationalized opinion that appellant did not require additional physical therapy as there was no longer objective evidence of

[26] *See D.D.*, Docket No. 09-1603 (issued April 8, 2010).

[27] *See R.A.*, Docket No. 09-1169 (issued January 14, 2010).

[28] *See supra* note 23.

[29] *J.G., supra* note 25; *see also Daniel J. Perea*, 42 ECAB 214 (1990).

ongoing lumbar sprain and as the amount of physical therapy she had already received was unwarranted.[30]

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 not established that the acceptance of her claim should be expanded to include additional conditions causally related to her September 3, 2013 employment injury. The Board further finds that OWCP did not abuse its discretion in denying authorization for continued physical therapy after January 31, 2016.

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 25, 2018
Washington, DC

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

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

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

[30] *See S.S.*, Docket No. 15-1880 (issued June 16, 2016).