United States Department of Labor
Employees' Compensation Appeals Board

L.R., Appellant	)	
and	)	**Docket No. 18-0671**
	)	**Issued: August 2, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Crementon, NJ, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 8, 2018 appellant filed a timely appeal from a January 12, 2018 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.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish the additional condition of sciatica as causally related to the November 13, 2017 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

[2] After OWCP issued its January 12, 2018 decision denying appellant's claim for the additional condition of sciatica, appellant provided additional evidence with her appeal. The Board's jurisdiction is limited to a review of the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On November 13, 2017 appellant, then a 53-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury at work on November 13, 2017 when she lifted a mail tray into the front of a truck. She asserted that she experienced pain in her lower back that radiated down the back of her legs. Appellant stopped work on November 13, 2017 and returned to modified full-time work approximately a week later. OWCP administratively handled appellant's case to allow for payment of a limited amount of medical expenses.

In a November 13, 2017 duty status report (Form CA-17), an individual with an illegible signature listed the date of injury as November 13, 2017 and the history of injury as lifting a tray of mail. The individual diagnosed lumbar strain and sciatica due to the reported injury and recommended various work restrictions, including lifting no more than 10 pounds.[3]

In November 21 and 22 duty status reports, Dr. Frederick M. Williams, an attending Board-certified internist, listed the date of injury as November 13, 2017 and the history of injury as lifting a tray into the front of a truck. He diagnosed lumbar strain due to the reported injury and recommended various work restrictions, including lifting no more than 10 pounds.

In a November 24, 2017 e-mail, an employing establishment official controverted appellant's claim for a November 13, 2017 employment injury. The official asserted that appellant had preexisting back and lower extremity conditions which explained her symptoms and posited that appellant did not use proper bending technique when lifting on November 13, 2017.

In a November 30, 2017 development letter, OWCP noted that a submitted document contained a diagnosis of lumbar strain and sciatica, and it requested that appellant submit a report from an attending physician explaining how these conditions were related to the claimed November 13, 2017 lifting incident at work. It requested that she complete and return an attached questionnaire which posed various questions regarding the claimed November 13, 2017 incident. OWCP afforded appellant 30 days to submit a response. On November 30, 2017 it also requested additional information from the employing establishment.

Appellant submitted additional medical evidence, including a November 20, 2017 note from Dr. Josette C. Palmer, an attending Board-certified family practitioner, who found that appellant was incapacitated due to a work-related injury beginning November 16, 2017. Dr. Palmer indicated that appellant could return to work on November 21, 2017.

In a November 21, 2017 report, Dr. Williams listed the date of injury as November 13, 2017 and noted that appellant presented complaining of sharp, shooting pain in her lower back which she attributed to lifting 30 pounds of mail into a truck at work. He detailed the findings of the physical examination he conducted on November 21, 2017 and diagnosed strain of lumbar region. Dr. Williams indicated that appellant could return to modified work. In November 29 and

[3] Appellant submitted administrative documents, including discharge instructions for her November 13, 2017 visit to a Kennedy Health System facility, a November 21, 2017 work activity status report, and a November 21, 2017 document detailing physical therapy appointments. The discharge instructions indicate that appellant was treated on November 13, 2017 by Dr. Wayne G. Tamaska, a Board-certified internist, but the record does not contain a report of Dr. Tamaska.

December 6, 2017 reports, he provided additional examination findings and diagnosed strain of the lumbar region.[4] On December 7, 2017 Dr. Williams diagnosed lumbar strain and indicated that appellant's back injury was a direct result of her lifting mail.

Appellant also submitted reports from November 2017 in which Eric Cohen and Kassidy Diaz, attending physical therapists, detailed their physical therapy sessions with appellant.[5]

In documents dated December 10 and 11, 2017, appellant responded to OWCP's November 30, 2017 development letter. She argued that she sustained new injuries to her back and lower extremities when she lifted trays of mail on November 13, 2017. Appellant asserted that she did not engage in improper lifting technique on November 13, 2017.

By decision dated January 12, 2018, OWCP accepted that appellant sustained a lumbar strain due to the November 13, 2017 employment incident.[6] It noted that the medical evidence of record was sufficient to establish that appellant sustained a lumbar strain due to the accepted November 13, 2017 lifting incident at work.[7]

By separate decision dated January 12, 2018, OWCP denied appellant's claim for the additional condition of sciatica. It determined that she failed to submit sufficient medical evidence to establish that the additional condition of sciatica was causally related to the November 13, 2017 employment injury.[8]

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 sustained in the performance of duty, as alleged, and that any specific condition or disability for which compensation is claimed is causally related to the employment injury.[9]

[4] In a November 29, 2017 duty status report, Dr. Williams diagnosed lumbosacral strain due to the reported November 13, 2017 lifting incident and recommended various work restrictions, including lifting no more than 20 pounds.

[5] Appellant also submitted additional documents, mostly of an administrative nature, including discharge instructions, a work activity status report, an emergency record, and Family and Medical Leave Act documents from August 2016 and June 2017 relating to a bilateral arthritic knee condition not relevant to the present claim.

[6] OWCP indicated that it previously had administratively handled appellant's case to allow for payment of a limited amount of medical expenses, but that it was now formally considering the merits of her claim.

[7] OWCP advised that the additionally diagnosed condition of sciatica had not been accepted and would be addressed in a separate decision.

[8] OWCP suggested that appellant specifically filed a claim for sciatica due to the November 13, 2017 employment injury, but the record does contain such a claim.

[9] *J.F.*, Docket No. 09-1061 (issued November 17, 2009). *See also J.T.*, Docket No. 17-0578 (issued December 6, 2017.

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[10] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[11] 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).[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish the additional condition of sciatica as causally related to the November 13, 2017 employment injury.

As noted above, OWCP accepted on January 12, 2018 that appellant sustained a lumbar strain due to the accepted lifting incident on November 13, 2017. It also determined on January 12, 2018 that the medical evidence did not establish that appellant sustained the additional condition of sciatica causally related to the November 13, 2017 employment injury. The Board finds that appellant did not submit sufficient medical evidence to establish sciatica causally related to the November 13, 2017 employment injury.

In a November 13, 2017 duty status report, an individual with an illegible signature listed the date of injury as November 13, 2017 and the history of injury as lifting a tray of mail. The individual diagnosed lumbar strain and sciatica due to the reported injury and recommended various work restrictions, including lifting no more than 10 pounds. However, the submission of this report does not establish that appellant sustained sciatica causally related to the November 13, 2017 employment injury. This is because the November 13, 2017 duty status report does not constitute probative medical evidence given that there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2). The Board has held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2), and that reports lacking proper identification do not constitute probative medical evidence.[13]

The record also contains reports from Dr. Williams indicating that appellant sustained a lumbar strain due to the accepted November 13, 2017 lifting incident at work. For example, in duty status reports dated November 21 and 22, 2017, Dr. Williams diagnosed lumbar strain due to the November 13, 2017 employment incident. However, neither Dr. Williams nor any other attending physician has related the condition of sciatica to the November 13, 2017 employment incident. In fact, no physician of record has diagnosed appellant with sciatica.

Appellant also submitted reports of attending physical therapists, but these reports are of no probative value on the relevant issue of this case because they do not constitute probative

[10] *Robert G. Morris*, 48 ECAB 238 (1996).

[11] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[12] *Id.*

[13] *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

medical evidence. The Board has held that the report of a physical therapist does not constitute probative medical evidence as a physical therapist is not considered a physician under FECA.[14]

For these reasons, appellant has not established the additional condition of sciatica as causally related to the November 13, 2017 employment injury.

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 met her burden of proof to establish the additional condition of sciatica as causally related to the November 13, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 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

[14] *See M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).