United States Department of Labor
Employees' Compensation Appeals Board

R.T., Appellant	)	
and	)	**Docket No. 17-1353**
	)	**Issued: December 3, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Cleveland, OH, Employer	)	

Appearances:
Alan J. Shapiro, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 8, 2017 appellant, through counsel, filed a timely appeal from a March 28, 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that her atypical chest pain and heat stroke are causally related to the accepted September 5, 2015 employment incident.

FACTUAL HISTORY

On September 8, 2015 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 5, 2015 at 12:20 p.m., while delivering mail, she developed heat stroke. She stopped work on September 5, 2015 and returned to work on September 9, 2015. Appellant's supervisor noted on the CA-1 form that appellant was in the performance of duty at the time of the alleged injury.

By development letter dated September 15, 2015, OWCP advised appellant of the type of evidence needed to establish her claim, particularly requesting that she submit a physician's reasoned opinion addressing the relationship between her claimed condition and specific employment factors. It also asked appellant to respond to a questionnaire to substantiate the factual elements of her claim. OWCP afforded appellant 30 days to submit the necessary evidence.

In a narrative statement, appellant indicated that on September 5, 2015, while delivering mail in Youngstown, Ohio, she became disoriented and suffered severe chest pains and shortness of breath. She returned to her mail truck and contacted her supervisor to inform her of her condition. Appellant reported driving herself to the hospital where she was admitted for heat stroke and spasm of the diaphragm.

A narrative statement from T.S., appellant's supervisor, noted that at approximately 12:20 p.m. on September 5, 2015 appellant reported that she was experiencing severe chest pain and was driving herself to the hospital.

Appellant submitted a duty status report (Form CA-17) from a provider with an illegible signature who noted clinical findings of elevated blood pressure, shortness of breath, chest pain, and tachycardia. She was diagnosed with atypical chest pain and returned to work full duty on September 12, 2015.

Appellant was treated in the emergency room by Dr. Amanda F. Collins, an osteopath, on September 5, 2015 for substernal chest pain, which began one to two hours before delivering mail outside. She reported shortness of breath, diaphoresis, and chest pain. Appellant noted being previously treated for high blood pressure. Dr. Collins noted findings on examination of no respiratory distress, normal breath sounds, no rales, no wheezing, normal heart rate, normal rhythm, and no murmurs, gallops, or rubs. A chest x-ray dated September 5, 2015 revealed no airspace, opacities, or pleural effusion. A computerized tomography (CT) angiogram of the chest without contrast dated September 5, 2015 was negative for intramural hematoma or aortic dissection. An electrocardiogram (EKG) revealed no abnormalities. Dr. Collins diagnosed chest pain, unspecified type and admitted appellant to the hospital for observation.

Appellant underwent a treadmill stress test and rest myocardial perfusion imaging on September 5, 2015, which revealed a normal examination without evidence of left ventricular myocardial ischemia. She also submitted laboratory results from September 5 and 6, 2015.

By decision dated October 20, 2015, OWCP denied the claim, finding that appellant failed to submit medical evidence establishing that a medical condition had been diagnosed in connection with the accepted work incident.

On October 29, 2015 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held on July 5, 2016.

Appellant submitted a chest x-ray dated September 5, 2015, a CT angiogram of the chest without contrast dated September 5, 2015, a treadmill stress test dated September 5, 2015, and laboratory results from September 5 and 6, 2015, all previously of record.

By decision dated August 5, 2016, an OWCP hearing representative affirmed the decision dated October 20, 2015.

On September 12, 2016 appellant, through counsel, requested reconsideration of the decision dated August 5, 2016.

Appellant submitted a September 10, 2015 report from Dr. Roman Davidenko, a Board-certified family practitioner, who treated her for chest pain. She reported that on September 5, 2015 at 11:00 a.m., while delivering mail in the heat, she experienced intermittent mid-sternum low anterior chest discomfort with a stabbing sensation. Appellant noted that the pain became more intense and frequent, she felt like the room was spinning, and felt unsteady. She indicated that she returned to her mail truck and called for assistance and drove to the hospital. Dr. Davidenko reviewed the medical records and indicated: the nuclear stress study revealed no chest pain or arrhythmia; the EKG was negative for ischemia; she had a low risk treadmill score; and a CT angiogram was negative for intramural hematoma or aortic dissection. He reported that appellant stopped smoking 28 years ago. Dr. Davidenko noted: findings on examination of blood pressure of 164/89, pulse 78, respiration rate of 16; she was in no acute distress; her lungs were clear to auscultation bilaterally; heart rate and rhythm was normal; and her chest was nontender to palpation. He diagnosed atypical chest pain. Dr. Davidenko opined that appellant's hospitalization ruled out a cardiac etiology for her symptoms. He returned appellant to work full duty.

By decision dated March 28, 2017, OWCP denied modification of the decision dated August 5, 2016.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 of FECA, that an injury was sustained in the performance of duty as alleged, and that

[3] *Supra* note 1.

any disability or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[5]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.[6]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[7] Aphysician'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.[8] 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).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her atypical chest pain and heat stroke were causally related to the accepted September 5, 2015 employment incident.

Appellant submitted a September 5, 2015 emergency room report from Dr. Collins, who treated her for substernal chest pain, which appellant reported began one to two hours before while delivering mail outside. She noted shortness of breath, diaphoresis, and chest pain. Appellant's history was significant for high blood pressure. Dr. Collins noted an essentially normal physical examination without respiratory distress. She noted a chest x-ray dated September 5, 2015 and an EKG were normal. A CT angiogram of the chest without contrast dated September 5, 2015 was negative for intramural hematoma or aortic dissection. Dr. Collins diagnosed chest pain, unspecified type and admitted appellant to the hospital for observation. However, she merely

[4] *Gary J. Watling*, 52 ECAB 357 (2001).

[5] *T.H.*, 59 ECAB 388 (2008).

[6] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *See C.D.*, Docket No. 17-2011 (issued November 6, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

[8] *See S.S.*, Docket No. 17-1466 (issued October 23, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

repeated the history of injury as reported by appellant without providing her own opinion regarding whether her condition was work related. To the extent that she is providing her own opinion, Dr. Collins failed to provide a rationalized opinion regarding the causal relationship between appellant's chest pain and the accepted work incident.[9]

Appellant submitted a September 10, 2015 report from Dr. Davidenko who treated her for chest pain. She reported that on September 5, 2015 at 11:00 a.m., while at work, she was carrying mail in the heat and experienced intermittent mid-sternum low anterior chest discomfort with a stabbing sensation. Appellant noted that the pain became more intense and frequent, she felt like the room was spinning, and felt unsteady. She reported returning to her mail truck, calling for assistance, and driving to the hospital. Dr. Davidenko reviewed the medical records and indicated: the nuclear stress study revealed no chest pain or arrhythmia; the EKG was negative for ischemia; appellant had a low risk treadmill score; and a CT angiogram was negative for intramural hematoma or aortic dissection. He noted appellant's blood pressure was 164/89, pulse 78, respiration rate of 16, her lungs were clear to auscultation bilaterally, heart rate and rhythm was normal, and palpation of her chest was nontender. Dr. Davidenko diagnosed atypical chest pain. He opined that appellant's hospitalization ruled out a cardiac etiology for her symptoms. Dr. Davidenko returned appellant to work full duty. As noted above, he merely repeated the history of injury as reported by appellant without providing his own opinion regarding whether her condition was work related. To the extent that Dr. Davidenko is providing his own opinion, he failed to provide a rationalized opinion regarding the causal relationship between appellant's atypical chest pain and the accepted work incident.[10]

Appellant submitted a September 10, 2015 duty status report (Form CA-17) from a provider with an illegible signature. However, there is no evidence that the document from the unidentified healthcare provider is from a physician. Medical documents not signed by a physician are not probative medical evidence and do not establish appellant's claim.[11]

The remainder of the medical evidence including an x-ray of the chest, a treadmill stress test, myocardial perfusion imaging, and laboratory results lack probative value as they fail to provide a physician's opinion on the causal relationship between appellant's work incident and her diagnosed atypical chest pain.[12] For this reason, this evidence is insufficient to meet her burden of proof.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the

[9] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018) (medical reports not containing rationale on causal relationship are entitled to no probative value).

[10] *Id.*

[11] *See R.M.*, 59 ECAB 690 (2008); *Bradford L. Sullivan*, 33 ECAB 1568(1982) (where the Board 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 FECA).

[12] *See M.B.*, Docket No. 17-1999 (issued November 13, 2018); *C.H.*, Docket No. 17-0266 (issued May 17, 2018) (where the Board found that as the diagnostic studies, consisting of x-rays and a magnetic resonance imaging scan, did not specifically address the cause of the diagnostic conditions, they lacked probative value in establishing causal relationship).

belief that her condition was caused, precipitated, or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.[13] Appellant failed to submit such evidence and therefore she has not met her burden of proof.

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 that her atypical chest pain and heat stroke were causally related to the accepted September 5, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 3, 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

[13] *See Dennis M. Mascarenas,* 49 ECAB 215 (1997).