United States Department of Labor
Employees' Compensation Appeals Board

N.L., Appellant	)	
	)	
and	)	**Docket No. 17-1823**
	)	**Issued: December 17, 2018**
U.S. POSTAL SERVICE, POST OFFICE, New York, NY, Employer	)	

Appearances:
James D. Muirhead, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 29, 2017 appellant, through counsel, filed a timely appeal from a March 29, 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 diagnosed back conditions are causally related to the accepted January 18, 2016 employment incident.

FACTUAL HISTORY

On January 20, 2016 appellant, a 35-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained a "middle back" injury on January 18, 2016 as a result of lifting while at work. She stopped working the next day on January 19, 2016.

An OWCP Form CA-16, authorization for examination, was issued by the employing establishment on January 20, 2016. Appellant was authorized to visit Dr. Leo Yankilevich, an internist.

Appellant submitted an attending physician's report dated January 21, 2016 from Dr. Yankilevich who diagnosed thoracic/lumbar sprain and opined that appellant's condition was caused or aggravated by picking up a box and placing it on a shelf at work. He advised that appellant was under his care and was unable to work from January 21 to February 18, 2016.

In a January 21, 2016 report, Dr. Nunzio Saulle, a Board-certified physiatrist, diagnosed thoracolumbar sprain/strain and noted that on January 18, 2016 appellant picked up a box and put it on a shelf and had a sudden onset of mid and lower back pain. He indicated that appellant also reported numbness of her left lower extremity, but indicated that this was preexisting from a prior injury which occurred the year before. Dr. Saulle reported that appellant sustained a work-related injury in July 2015 when she injured her neck and middle and lower back. He noted that appellant received physical therapy and she stated that her neck and back pains eventually resolved.

In a February 26, 2016 letter, the employing establishment controverted appellant's claim asserting that she had not established that the January 18, 2016 employment incident occurred as alleged.

In a duty status report (Form CA-17) dated March 9, 2016, Dr. Saulle continued to diagnose thoracolumbar sprain and indicated that appellant was advised to return to work, effective March 1, 2016. He provided restrictions including no lifting/carrying more than five pounds.

Appellant also submitted physical therapy notes dated February 25, and March 1 and 3, 2016.

On March 18, 2016 appellant filed a claim for wage-loss compensation (Form CA-7) for the period March 5 to 18, 2016.

In a March 24, 2016 letter, OWCP indicated that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It instructed that it had reopened the claim for consideration because a claim for wage-

loss compensation had been received. OWCP requested additional evidence and afforded appellant 30 days to respond to its inquiries.

In response, appellant submitted physical therapy notes dated March 7, 9, 11, 14, and 18, 2016.

On January 25, 2016 Dr. Saulle continued to diagnose thoracolumbar sprain/strain and noted that appellant had persistent mid and lower back pain aggravated with prolonged standing. He noted that appellant was advised that she was capable of returning to work on March 1, 2016, but that she had not yet returned to work.

In a March 28, 2016 narrative statement, appellant indicated that on January 18, 2016 she began loading packages and began to feel a sharp pain in her back. She further indicated that in July of last year she had a work-related injury, after which Dr. Yankilevich cleared her for work with limitations on no heavy lifting of packages. Appellant stated that her work restrictions were not honored by the employing establishment.

On March 24, 2016 Dr. Saulle reiterated his diagnosis and recommended a magnetic resonance imaging (MRI) scan of the lumbar spine to rule out disc pathology as a cause of ongoing pain. He advised that appellant was totally disabled for work.

Appellant further submitted physical therapy notes dated March 22, 24, 28, 29, and 31 and April 5, 6, and 7, 2016.

By decision dated April 29, 2016, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the January 18, 2016 employment incident occurred as alleged.

Subsequently, appellant submitted an April 4, 2016 MRI scan of the lumbar spine, which showed a posterior disc bulge at L4-5. A thoracic spine MRI scan of that same date revealed disc bulging at T4-5, T6-7, and T10-11.

Appellant also submitted physical therapy notes dated April 11, 13, and 18, 2016.

On May 5, 2016 appellant requested an oral hearing by a representative of the Branch of Hearings and Review.

Appellant submitted physical therapy notes dated April 28 and 29, 2016.

In a May 4, 2016 report, Dr. Saulle diagnosed thoracic and lumbar disc bulges and continued to advise that appellant was totally disabled for work.

Appellant further submitted physical therapy notes dated May 3 and 4, 2016.

In a January 3, 2017 report, Dr. Leon Reyfman, a Board-certified anesthesiologist and pain medicine specialist, diagnosed lumbar and lumbosacral intervertebral disc displacement, thoracic intervertebral disc disorders with radiculopathy, and other intervertebral disc displacement of the thoracic region. Appellant reported that she developed middle back pain on January 18, 2016 at

work after lifting heavy boxes. Dr. Reyfman found that her pain was exacerbated by mechanical-type activities including standing, sitting, bending forward, lifting, and twisting. He opined that there was a direct causal relationship between the accident described and appellant's current injuries because her "symptoms and clinical findings were consistent with musculoskeletal injuries to the described areas." Dr. Reyfman advised that appellant was temporarily, partially disabled for work.

A telephonic hearing was held before an OWCP hearing representative on January 12, 2017. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

In response, counsel submitted a witness statement from appellant's coworker, L.A., who testified that he saw appellant suffering from pain while working in January 2016 and told him that she was in pain, but continued to work with him on their assignment until it was completed.

By decision dated March 29, 2017, OWCP's hearing representative affirmed the prior decision as modified, finding that the January 18, 2016 employment incident occurred as alleged. However, the claim remained denied the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted January 18, 2016 work incident.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[3]

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[4] The second component is whether the employment incident caused a personal injury. An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[5]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[6] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be

[3] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

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

based on a complete factual and medical background.[7] 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).[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her diagnosed back condition is causally related to the accepted January 18, 2016 employment incident. In support of her claim appellant submitted medical reports from physicians who provided treatment following her employment incident. Dr. Yankilevich diagnosed thoracic/ lumbar sprain and opined that appellant's condition was caused or aggravated by picking up a box and placing it on a shelf at work. The Board finds that Dr. Yankilevich has not provided sufficient medical rationale explaining how appellant's new or preexisting back condition was caused or aggravated by lifting at work on January 18, 2016. Rather, his opinion was conclusory in nature. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.[9] The need for rationale is particularly important as the evidence indicates that he had treated appellant for a preexisting condition.[10] Therefore, the Board finds that the reports from Dr. Yankilevich are insufficient to establish causal relationship.

In his reports, Dr. Saulle diagnosed thoracolumbar sprain/strain and thoracic and lumbar disc bulges. He noted that on January 18, 2016 appellant picked up a box and put it on a shelf and then had a sudden onset of mid and lower back pain. Dr. Saulle reported that appellant had sustained a work-related injury in July 2015 when she injured her neck and middle and lower back. He advised that appellant was totally disabled for work. As noted above, a physician's opinion must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[11] The Board finds that Dr. Saulle's reports do not include sufficient medical rationale explaining how the January 18, 2016 lifting incident either caused, contributed to, or aggravated appellant's thoracic and lumbar conditions. Therefore, the Board finds that the reports from Dr. Saulle are insufficient to establish causal relationship.

In his January 3, 2017 report, Dr. Reyfman diagnosed lumbar and lumbosacral intervertebral disc displacement, thoracic intervertebral disc disorders with radiculopathy, and other intervertebral disc displacement of the thoracic region. Appellant reported that she

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

[8] *Id*.

[9] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

[10] *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

[11] *Id*.

developed middle back pain on January 18, 2016 at work after lifting heavy boxes. Dr. Reyfman opined that there was a direct causal relationship between the accident described and appellant's current injuries because her "symptoms and clinical findings were consistent with musculoskeletal injuries to the described areas." He advised that appellant was temporarily, partially disabled from work. Dr. Reyfman opined that appellant's conditions were causally related to the January 18, 2016 lifting incident at work. However, the fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.[12] Temporal relationship alone will not suffice.[13] A physician's opinion must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[14] As noted above, the need for rationale is particularly important as the evidence indicates that appellant had a preexisting condition, namely a July 2015 injury to her neck and middle and lower back.[15] Dr. Reyfman's report did not include sufficient medical rationale explaining how the January 18, 2016 lifting incident either caused or contributed to appellant's back conditions. For these reasons, the Board finds that the evidence from Dr. Reyfman is insufficient to establish that appellant's diagnosed conditions are causally related to the accepted January 18, 2016 work incident.

Appellant also submitted April 4, 2016 MRI scan reports of the lumbar and thoracic spine which confirmed the diagnosis of thoracic and lumbar disc bulges. The Board has held, however, that diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.

Appellant also submitted evidence from physical therapists. These reports do not constitute competent medical evidence because physical therapists are not considered physicians as defined under FECA.[16] This evidence therefore has no probative value and is insufficient to satisfy appellant's burden of proof with respect to causal relationship.

As appellant has not submitted rationalized medical evidence to support her claim that she sustained a back injury causally related to the January 18, 2016 employment incident, she has failed to meet her burden of proof to establish entitlement to compensation benefits.

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.

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[12] 20 C.F.R. § 10.115(e).

[13] *See D.I.*, 59 ECAB 158, 162 (2007).

[14] *Victor J. Woodhams*, *supra* note 7.

[15] *Supra* note 10.

[16] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapist); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her back condition is causally related to the accepted January 18, 2016 employment incident.[17]

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2018
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

[17] The Board notes that the employing establishment issued appellant a Form CA-16 on January 20, 2016 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. *See D.M.*, Docket No. 13-0535 (issued June 6, 2013). *See also* 20 C.F.R. §§ 10.300, 10.304.