United States Department of Labor
Employees' Compensation Appeals Board

Y.K., Appellant	)	
and	)	**Docket No. 18-0806**
	)	**Issued: December 19, 2018**
DEPARTMENT OF VETERANS AFFAIRS, HUNTER HOLMES MCGUIRE HOSPITAL, Richmond, VA, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 5, 2018 appellant filed a timely appeal from a January 31, 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a low back injury causally related to the accepted September 8, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 13, 2017 appellant, then a 36-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on September 8, 2017 she injured her lower back while transferring a patient in the performance of duty. She did not stop work.

In support of her claim, appellant provided notes from Aubrey Stoll, a physician assistant, dated August 18, September 18, and October 2, 2017 and notes from Don R. Milliron, physician assistant, dated September 10, 2017.

In a September 18, 2017 note, Dr. Douglas C. Powell, an osteopath, diagnosed sprain of the lumbar spine.

Appellant also provided notes from her employing establishment clinic relating that on September 8, 2017 she was moving a patient and lifting his lower half when she felt pain in her right arm and back. Later that day she felt a sharp pain radiating down to her knees. The employing establishment physician, whose signature is illegible, further noted that appellant was still on light duty due to a right arm and shoulder injury which occurred on June 29, 2017.[2]

In notes dated September 10, and 13, 2017, Dr. Kim C. Clements, a Board-certified family practitioner, examined appellant due to severe pain radiating from her back down the back of her right leg. She noted that appellant was on light duty due to a previous shoulder injury and had not been lifting anything, but helped to move a patient at work and began to experience progressive back pain and leg pain. Dr. Clements diagnosed lumbar spine ligament sprain.

On September 18, 2017 Dr. William C. Foster, an orthopedic surgeon, provided appellant's light-duty restrictions of no lifting, no bending/twisting, and sitting as needed. Dr. Andreya B. Risser, a Board-certified family practitioner, completed a note on October 24, 2017 and provided light-duty restrictions of no lifting, no bending, no twisting, and sitting as needed.

In a report dated October 24, 2017, Dr. Andrew Chapman, a Board-certified orthopedic surgeon, related that he had examined appellant and found subacute questionable left-sided radiculopathy. He recommended physical therapy and light duty.[3] Dr. Chapman reexamined appellant on December 5, 2017 and noted that surgery was being considered. He continued to recommend light-duty work.

In a development letter dated December 26, 2017, OWCP noted that when appellant's claim was received, it appeared to be a minor injury that resulted in minimal time lost from work and that payment of a limited amount of medical expenses was administratively approved without formally considering the merits of the claim. It reopened her claim for consideration and requested additional factual and medical evidence. OWCP afforded appellant 30 days for a response.

[2] OWCP File No. xxxxxx204.

[3] On November 21, 2017 appellant received work restrictions from a provider whose signature is illegible.

In a January 6, 2018 statement, appellant advised that, while she was on light duty, a patient attempted to move from his bed onto a gurney, but almost fell. She had to help him with the transfer of the lower half of his body. During the transfer, appellant felt something in her lower back, but continued to work. She reported that on September 8, 2017 she experienced pain radiating down her left leg both before and after the patient transfer.

In a treatment note dated September 18, 2017, Dr. Powell indicated that appellant injured her back at work. He related that she worked as a nurse and was experiencing pain shooting down her left leg. Dr. Powell diagnosed sprain of ligament of the lumbar spine and recommended light-duty work. Appellant also resubmitted Dr. Clements' September 10, 2017 note.

In a treatment note dated November 3, 2017, Dr. Norman D. Boardman, a Board-certified orthopedic surgeon, examined appellant and found that her shoulder pain had resolved. He reported that she had a fall when her leg collapsed. Dr. Boardman diagnosed resolved right shoulder pain, sciatica, and left trochanteric bursitis.

On December 8, 2017 appellant sought treatment from Dr. Dennis J. Rivet, a Board-certified neurosurgeon. He diagnosed left lower extremity radiculopathy, with evidence of small left-sided L4-5 disc herniation. Dr. Rivet described appellant's history that she was working as a nurse when she experienced low back pain immediately after transferring a patient. The following day appellant's low back pain was severely exacerbated and associated with left lower extremity pain, numbness, and tingling. On physical examination, Dr. Rivet found mildly positive left-sided straight leg raising. He recommended conservative treatment.

In a treatment note dated November 21, 2017, Dr. Chapman reviewed appellant's lumbar spine magnetic resonance imaging (MRI) scan and found left paracentral disc herniation at L4-5. He also examined appellant on January 2, 2018 due to low back pain radiating into the left leg. Dr. Chapman recommended light-duty work.

By decision dated January 31, 2018, OWCP denied the claim. It found that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted September 8, 2017 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 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.[5]

[4] *Supra* note 1.

[5] *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *Gary J. Watling*, 52 ECAB 357 (2001).

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 she actually experienced the employment incident at the time, place, and in the manner alleged.[6] Second, the employee must submit medical evidence to establish that the employment incident caused a personal 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 supporting such causal relationship.[8] 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.[9] Medical opinion must include an accurate history of the employee's employment incident and must explain how the condition is related to the incident. 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

The Board finds that appellant has not met her burden of proof to establish that she sustained a low back injury causally related to the accepted September 8, 2017 employment incident.

In his September 18, 2017 note, Dr. Powell opined that appellant injured her back at work. He reported that she worked as a nurse and diagnosed lumbar ligament sprain. The Board notes that, although Dr. Powell provided an affirmative opinion which supported causal relationship, he did not offer a rationalized medical explanation to support his opinion. Medical evidence that provides a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[11] The Board has found that a physician must provide a narrative description of the identified employment incident and a reasoned opinion explaining how physiologically the employment incident described caused or contributed to appellant's diagnosed medical condition.[12] Without explaining how physiologically the movements involved in the accepted employment incident caused or

[6] *L.F.*, Docket No. 17-0689 (issued May 9, 2018).

[7] *A.D., supra* note 5; *T.H.*, 59 ECAB 388 (2008).

[8] *R.B.*, Docket No. 18-0416 (issued September 14, 2018).

[9] *A.D., supra* note 5; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[10] *R.B., supra* note 8; *James Mack*, 43 ECAB 321 (1991).

[11] *M.E.*, Docket No. 18-0330 (issued September 14, 2018); *A.D.*, 58 ECAB 149 (2006).

[12] *Id.*

contributed to the diagnosed condition, Dr. Powell's opinion on causal relationship is equivocal in nature and of limited probative value.[13]

Dr. Clements, in her September 10, and 13, 2017 treatment notes, and Dr. Rivet in a December 8, 2017 treatment note, described appellant's history of injury. Dr. Clement diagnosed lumbosacral sprain and Dr. Rivet diagnosed herniated disc at L4-5. However, neither of these physicians offered an opinion regarding the cause of appellant's diagnosed conditions. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[14] Therefore the submission of these reports do not establish appellant's claim for a September 8, 2017 employment injury.

Dr. Boardman, in his November 3, 2017 note, reported that appellant had a fall when her leg collapsed. He diagnosed resolved right shoulder pain, sciatica, and left trochanteric bursitis. This note is not based on an accurate factual history. Dr. Boardman did not attribute appellant's diagnosed conditions to her accepted September 8, 2017 employment incident of aiding a patient, but instead attributed her conditions to a fall. There is no other factual or medical evidence supporting that appellant sustained an employment-related fall on or after September 8, 2017. As Dr. Boardman's report is not based on an accurate factual background, it lacks the necessary probative value to establish appellant's traumatic injury claim.[15]

Drs. Foster and Risser provided light-duty restrictions, but no diagnosis, history of injury, or specific opinion as to whether the accepted employment incident caused appellant's conditions. These reports are, therefore, of little probative value and insufficient to establish causal relationship.[16] Likewise the report from the employing establishment physician with an illegible signature cannot be considered probative medical evidence as it lacks proper identification.[17]

The reports from Mr. Stoll and Mr. Milliron, physician assistants, have no probative medical value. Physician assistants are not considered physicians as defined under FECA and, therefore, their opinions are of no probative medical value.[18]

Appellant has not submitted any medical evidence based on a complete factual and medical background, of reasonable medical certainty, and supported by medical rationale explaining the

[13] *Id.*

[14] *See L.F., supra* note 6; *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

[15] *J.M.*, Docket No. 16-1265 (issued September 21, 2017).

[16] *D.S.*, Docket No. 18-0280 (issued June 12, 2018).

[17] *Id.; R.M.*, 59 ECAB 690 (2008).

[18] *K.R.*, Docket No. 18-0711 (issued September 6, 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); the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.404; *Roy L. Humphrey*, 57 ECAB 238 (2005).

nature of the relationship between the diagnosed condition and the accepted employment incident. For these reasons, appellant has not met her burden of proof to establish an injury due to the accepted September 8, 2017 employment incident.

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 a low back injury causally related to the accepted September 8, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 2018
Washington, DC

Christopher J. Godfrey, 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