

**United States Department of Labor
Employees' Compensation Appeals Board**

C.L., Appellant)	
)	
and)	Docket No. 18-0363
)	Issued: July 19, 2018
DEPARTMENT OF DEFENSE, EDUCATION)	
ACTIVITIES, Alexandria, 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 December 11, 2017 appellant filed a timely appeal from a September 25, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 a back condition causally related to the accepted February 9, 2017 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted new evidence on appeal. The Board's jurisdiction is limited to a review of evidence which was before OWCP at the time it issued its final decision. Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On March 9, 2017 appellant, then a 66-year-old teacher, filed a traumatic injury claim (Form CA-1) alleging that on February 9, 2017 she injured her lower back/face at work when a student pushed and pulled against her causing her to fall backwards. She stopped work on the date of injury and returned to work on February 13, 2017.

An emergency department discharge sheet and a patient encounter form dated February 9, 2017 indicated that appellant was evaluated by Dr. Corey G. Gustafson, a Board-certified emergency medicine specialist, who diagnosed a fall from standing and low back pain and released appellant without limitations.

In a February 17, 2017 attending physician's report (Form CA-20), Dr. Jason Palmer³ related a history that on February 9, 2017 appellant was seen in the emergency room for low back pain sustained as a result of a fall that occurred while she was interacting with a student. He reported his examination findings and diagnosed low back pain. Dr. Palmer checked a box marked "yes" that the diagnosed condition was caused or aggravated by the described employment activity. He explained that appellant's fall caused her lower back pain. Dr. Palmer advised that she was totally disabled from February 10 to 11, 2017 and partially disabled from February 11 to 17, 2017. He noted that appellant resumed light work on February 13, 2017.

An additional patient encounter form dated June 9, 2017 noted that appellant was seen by a technologist/technician and a physical therapist who diagnosed low back pain.

By development letter dated August 17, 2017, OWCP noted that appellant's claim initially appeared to be a minor injury that resulted in minimal lost time from work. It had approved a limited amount of medical expenses without considering the merits of her claim. OWCP reopened appellant's claim because her medical expenses had exceeded \$1,500.00. It requested that she provide additional medical evidence in support of her traumatic injury claim, including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury. OWCP noted that a diagnosis of pain alone was considered a symptom and not a valid diagnosis. Appellant was afforded 30 days to submit the requested evidence.

OWCP received a health record (SF-600) dated September 13, 2017 from Dr. William C. Anderson⁴ who treated appellant in the employing establishment's medical clinic. Dr. Anderson related a history that on February 9, 2017 she fell, resulting in lower back pain. He noted a history of appellant's medical, personal, and family background. Dr. Anderson discussed findings on physical and neurological examination. He reviewed essentially normal x-ray results of the right elbow, lumbar spine, and pelvis with the exception of prominent osteopenia and degenerative joint disc disease of the lumbar spine and pelvis. Dr. Anderson assessed sprain of ligaments of the lumbar spine subsequent to encounter. He maintained that appellant was injured while taking care of her students.

³ Dr. Palmer's professional credentials cannot be verified.

⁴ The Board notes that Dr. Anderson's professional qualifications cannot be verified.

By decision dated September 25, 2017, OWCP denied appellant's traumatic injury claim as the medical evidence of record did not contain a rationalized medical opinion explaining how her diagnosed lumbar conditions were causally related to the accepted February 9, 2017 employment incident.

LEGAL PRECEDENT

An employee 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 evidence⁵ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁶

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.⁷ 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 and place, and in the manner alleged.⁸

The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁹ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified incidents.¹⁰ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a back condition caused or aggravated by the accepted February 9, 2017 employment incident.

Appellant submitted a February 17, 2017 Form CA-20 report from her physician, Dr. Palmer. In this report, Dr. Palmer examined her and diagnosed low back pain due to the February 9, 2017 employment incident. He explained that appellant's fall caused the diagnosed condition. Dr. Palmer advised that she was totally disabled from February 10 and 11, 2017 and

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁸ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁹ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

¹⁰ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

¹¹ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

partially disabled from February 11 to 17, 2017, noting that she resumed light work as of February 13, 2017. It is not possible to establish the cause of a medical condition if the physician has not provided a diagnosis, but only notes pain.¹² The Board has consistently held that pain is a symptom and not a compensable medical diagnosis.¹³ A medical report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.¹⁴ Dr. Palmer failed to provide adequate medical rationale explaining how the fall at work on February 9, 2017 actually caused or aggravated a back condition. For these reasons, the Board finds that his report is insufficient to establish causal relationship.

Similarly, the reports appellant submitted from Dr. Gustafson and Dr. Anderson are also insufficient to establish causal relationship. In a February 9, 2017 emergency department discharge sheet and patient encounter form, Dr. Gustafson diagnosed her as having pain due to a fall on that date. His diagnosis of low back pain, as noted above, is a symptom, rather than a compensable medical diagnosis.¹⁵ In a September 13, 2017 report, Dr. Anderson examined appellant and assessed sprain of ligaments of the lumbar spine subsequent to encounter due to the February 9, 2017 employment incident. Although he provided a diagnosis, he did not provide the necessary medical rationale which would explain how the diagnosed back condition was caused or aggravated by her work activities on February 9, 2017. As previously noted, a medical report is of limited probative value on the issue of causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.¹⁶ For these reasons, the Board finds that the reports of Dr. Gustafson and Dr. Anderson are insufficient to establish causal relationship.

The remaining medical evidence of record is also insufficient to establish causal relationship. The June 9, 2017 patient encounter form from a technologist/technician and physical therapist which provided a diagnosis of low back pain has no probative medical value as neither a technologist/technician nor a physical therapist is considered a physician as defined under FECA.¹⁷

The Board finds that appellant has failed to submit rationalized, probative medical evidence sufficient to establish a back condition causally related to her accepted February 9, 2017 employment incident. As such, appellant has not met her burden of proof.

On appeal appellant contends that she sustained a work-related acute lumbar sprain on February 9, 2017. She maintains that her known chronic conditions of intervertebral disc

¹² See *A.C.*, Docket No. 16-1587 (issued December 27, 2016).

¹³ *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

¹⁴ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *D.R.*, Docket No. 16-0528 (issued August 24, 2016).

¹⁵ See *supra* note 12.

¹⁶ *Id.*

¹⁷ 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 *Eric N. Cook*, Docket No. 03-705 (issued April 8, 2003) (technologist); *A.M.*, Docket No. 16-1552 (issued July 5, 2017) (physical therapist).

degeneration of the lumbar region and osteopenia are neither related to nor contributed to her lumbar sprain diagnosis. An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.¹⁸ Appellant's honest belief that she developed a back condition from the employment incident on February 9, 2017, however, sincerely held, does not constitute medical evidence necessary to establish causal relationship.¹⁹ As she has failed to provide a rationalized medical opinion sufficient to establish causal relationship between her claimed condition and her employment, she has failed to meet 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 failed to meet her burden of proof to establish a back condition causally related to the accepted February 9, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 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

¹⁸ See *S.H.*, Docket No. 17-1447 (issued January 11, 2018).

¹⁹ *H.H.*, Docket No. 16-0897 (issued September 21, 2016).