United States Department of Labor
Employees' Compensation Appeals Board

D.A., Appellant	)	
and	)	**Docket No. 17-0392**
	)	**Issued: June 26, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Newark, NJ, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 12, 2016 appellant filed a timely appeal of a November 18, 2016 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury causally related to the accepted January 12, 2016 employment incident.

FACTUAL HISTORY

On April 7, 2016 appellant, then a 31-year-old postal inspector, filed a traumatic injury claim (Form CA-1) alleging that, on January 12, 2016, she was in her employing establishment vehicle when she was struck by another vehicle running a red light while in the performance of duty. Appellant's supervisor indicated on the reverse side of the claim form that appellant was in

[1] 5 U.S.C. § 8101 *et seq.*-

the performance of duty at the time of the January 12, 2016 incident. Regarding continuation of pay, the supervisor noted that appellant did not report the injury within 30 days of the injury. Appellant did not initially stop work.

OWCP received January 12, 2016 discharge instructions, clinical summary and invoice from St. Barnabas Medical Center Emergency Department and motor vehicle collision home care instructions.

In a development letter dated April 14, 2016, OWCP informed appellant of the type of evidence needed to support her claim and requested that she submit such evidence within 30 days. It noted that there was no medical diagnosis of any condition resulting from the injury. OWCP requested that appellant complete a questionnaire and provide detailed factual information concerning the accident, including where it occurred and whether she was in the performance of her official duties at the time. A similar development letter of the same date requested additional factual information from the employing establishment.

In an April 26, 2016 statement, appellant indicated that following her car accident on January 12, 2106 she drove herself to the emergency room for the purpose of being examined. She noted that, at the time, she was approximately 11 weeks pregnant and wanted to ensure that no harm had come to her unborn child. Appellant explained that the physician conducted an ultrasound and recommended a follow up with her personal obstetrician to confirm that no harm was done to the baby. She explained that the injury was not reported until April 7, 2016, as she believed that her medical bills would be paid by the insurance company for the driver who caused the accident. Appellant indicated that no other injuries were sustained. Regarding her work activities on the date of the injury, she explained that she was at the "Orange location" in Orange, New Jersey, where she retrieved a reported suspicious parcel. The distance between the accident and her last official duty was approximately 1.6 miles. Appellant noted that she was supposed to go to 2 Federal Square in Newark, New Jersey. She explained that when the accident occurred she was on the most direct route from the point of her last official duty to her next expected duty. Appellant named the location of the accident and indicated that she was operating a government-owned vehicle at the time.

OWCP received a copy of a January 12, 2016 employing establishment accident report, accident investigation worksheets, diagrams, and a motor vehicle accident report of the same date. It also received a monthly vehicle log of appellant's authorized vehicle usage and an authorization to disclose health information and bill from Saint Barnabas Medical Center.

In a January 14, 2016 statement, appellant indicated that at approximately 8:45 a.m. on January 12, 2016 she was traveling eastbound on Freeway Drive East, when another car ran the red light, entered the intersection, and slammed into her.

In an April 4, 2016 statement, R.L., a postal inspector and team leader, confirmed appellant's details of her motor vehicle accident on January 12, 2016.

In an April 22, 2016 report, Dr. Linda Silva-Karcz, Board-certified in obstetrics and gynecology, noted that appellant was seen in their office on January 13, 2016, the day after her car accident. She provided a copy of the ultrasound that was taken and indicated that her notes

were on the bottom of the report. The attached January 13, 2016 ultrasound notes revealed that there was "no bleeding and no surgery."

OWCP received part of an attending physician's report (Form CA-20), dated April 25, 2016 from a physician, whose signature is illegible and treated an unnamed individual for a left knee injury.

By decision dated May 18, 2016, OWCP accepted that the January 12, 2016 employment incident occurred as alleged. However, it denied appellant's claim, finding that she had not submitted medical evidence containing a valid medical diagnosis of a medical condition from a qualified physician in connection with the accepted employment incident.

On June 14, 2016 appellant requested reconsideration. She indicated that the visit to the emergency room was for the purpose of checking out the status of her unborn child. Appellant indicated that the ultrasound was performed and then she followed up with her physician. She argued that the ultrasound was necessary, as noted by her physician, Dr. Silva-Karcz, who indicated it was done to determine the safety of the unborn child. Appellant noted that the document pertaining to a left knee injury was not related to her.

OWCP received a neurological assessment and laboratory reports from St. Barnabas Medical center and patient education notes dated January 12, 2016, some of which were signed by a nurse. Dr. Sarah Kuhlmann, an emergency medicine physician, who indicated that appellant was pregnant and in a motor vehicle collision. She also ordered the above-noted testing and recommended follow up with her physician. OWCP also received copies of the previously submitted reports and documents.

In a June 3, 2016 report, Dr. Silva-Karcz explained that she saw appellant on January 13, 2016, the day after her motor vehicle accident. She indicated that an ultrasound was performed and confirmed that the unborn baby was in good health.

By decision dated November 18, 2016, OWCP denied modification of its May 18, 2016 decision, finding that the medical evidence of record did not contain a valid medical diagnosis from a qualified physician in connection with the accepted employment incident.

LEGAL PRECEDENT

A claimant seeking benefits under FECA[2] 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

[2] *Id.*

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

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.[5] 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.[6]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[7] A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident 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 the specific employment incident.[9]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[10] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury causally related to the accepted January 12, 2016 employment incident. The medical evidence, it is insufficiently rationalized to establish the second component of fact of injury, that the employment incident caused an injury. The medical evidence contains no reasoned no explanation of how the specific employment incident on January 12, 2016 caused or aggravated an injury or condition.[12]

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

[5] *John J. Carlone*, 41 ECAB 354 (1989).

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

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

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

[9] *Id.*

[10] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[11] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[12] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

OWCP received a neurological assessment, laboratory reports from St. Barnabas Medical center. The Board had held that diagnostic test reports are not probative to the issue of causal relationship as they do not offer an opinion regarding the cause of an employee's condition.[13] Appellant also submitted patient education notes dated January 12, 2016, signed by a nurse. The Board has held that nurses are not considered physicians under FECA and, thus, their reports are of no probative value.[14]

In a January 12, 2016 report, Dr. Kuhlmann indicated that appellant was pregnant and in a motor vehicle collision. She also ordered the above-noted testing and recommended follow up with her physician. However, Dr. Kuhlmann did not provide a diagnosis.[15]

In an April 22, 2016 report, Dr. Silva-Karcz advised that appellant was seen in her office on January 13, 2016, the day after her car accident. She indicated that an ultrasound revealed that there was "no bleeding and no surgery." Dr. Silva-Karcz provided diagnosis with regard to whether appellant had any condition related to the January 12, 2016 incident. Likewise, in a June 3, 2016 report, she reiterated that she saw appellant on January 13, 2016, the day after her motor vehicle accident. Dr. Silva-Karcz indicated that an ultrasound was performed to determine that the unborn child was safe. She did not provide a diagnosis and, as such, this report is insufficient to establish appellant's claim.[16]

Because the medical reports submitted by appellant do not address how the January 12, 2016 incident at work caused or aggravated a diagnosed condition, these reports are of limited probative value[17] and are insufficient to establish that the January 12, 2016 employment incident caused or aggravated a specific injury.

On appeal appellant argues that her ultrasound was necessary to check on the status of her unborn child. However, as found above, the medical reports do not address how the January 12, 2016 incident at work caused or aggravated a diagnosed condition.

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.

[13] *S.S.*, Docket No. 16-1760 (issued January 23, 2018).

[14] *Supra* note 11.

[15] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[16] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[17] *See Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a traumatic injury causally related to the accepted January 12, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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