United States Department of Labor
Employees' Compensation Appeals Board

E.R., Appellant	)	
	)	
and	)	**Docket No. 18-0202**
	)	**Issued: June 5, 2018**
U.S. POSTAL SERVICE, RESEDA POST OFFICE, Reseda, CA, 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 November 6, 2017 appellant filed a timely appeal from an October 18, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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 claim.

ISSUE

The issue is whether appellant has established a recurrence of a medical condition on or after September 10, 2016 causally related to her accepted December 22, 2015 employment injury.

[1] The Board notes that appellant submitted a timely request for oral argument with her appeal. By letter dated November 17, 2017, appellant withdrew her request for oral argument.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 22, 2015 appellant, then a 58-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that same date she sustained a back and right arm injury when she slipped and fell on stairs while delivering mail. She stopped work, notified her supervisor, and sought medical treatment on that same date.

On the date of the alleged injury, the employing establishment issued appellant a properly completed authorization for examination and/or treatment, Form CA-16, which indicated that appellant was authorized to seek medical treatment for her December 22, 2015 right arm and lower back injury.

In medical reports dated December 22, 2015 through January 18, 2016, Dr. Ezequiel Suarez, a treating physician specializing in internal medicine, documented treatment for appellant's claimed December 22, 2015 injury after she slipped and fell while delivering mail, injuring her lower back and arm. He diagnosed low back contusion, right elbow contusion, and right elbow abrasion, stating that the conditions were a result of the work-related fall. Dr. Suarez restricted appellant from working through December 28, 2015 when he released her to modified light duty.

In a December 23, 2015 diagnostic report, Dr. Myungsun Moon, a Board-certified diagnostic radiologist, reported that x-rays of the lumbosacral spine revealed degenerative changes. An x-ray of the right elbow revealed no acute fracture.

In a January 18, 2016 medical report, Dr. Suarez reported that physical examination of the right elbow and lumbar spine revealed normal findings. He noted that appellant's pain had resolved and she had reached maximum medical improvement (MMI). Dr. Suarez discharged her to full-duty work without restrictions.

On September 10, 2016 appellant filed a notice of recurrence (Form CA-2a). She did not stop work, but did not indicate on the form whether she was alleging a recurrence of disability or of medical treatment. On the reverse side of the form, appellant's supervisor indicated that following her original injury, the employing establishment accommodated her modified duties until she was released to full-duty work on January 18, 2016.

By decision dated October 7, 2016, OWCP accepted appellant's claim for low back contusion, right elbow contusion, and right elbow abrasion. It noted that when the claim had been received, it appeared to be a minor injury, which resulted in minimal or no lost time from work, and payment of a limited amount of medical expenses was administratively approved. OWCP reopened the claim for consideration because appellant had filed a claim for a recurrence.

By development letter dated October 7, 2016, OWCP informed appellant that the evidence of record was insufficient to support her recurrence claim. Appellant was advised of the medical and factual evidence needed and provided a questionnaire for completion. She was directed to respond within 30 days.

In support of her claim, appellant submitted a September 30, 2016 progress note from Suren Meliksetyan, a physical therapist (PT), documenting physical therapy treatment after she tweaked her back muscle.

By decision dated November 7, 2016, OWCP denied appellant's recurrence claim finding that the medical evidence of record failed to establish that her need for additional medical treatment was due to a material change/worsening of her accepted work-related condition, without intervening cause.

On October 11, 2017 appellant requested reconsideration of OWCP's decision. In an accompanying narrative statement, she reported that her back was painful and she needed additional medical treatment.

In a September 15, 2016 medical report, Dr. Taha Mansoor Ahmad, Board-certified in internal medicine, reported that appellant complained of low back pain. She noted a history of injury when she fell and hit her back after slipping and falling on stairs when she was delivering mail. Dr. Ahmad also noted bilateral knee and right shoulder complaints under a different workers' compensation claim. She reported that x-rays revealed degenerative changes and an August 31, 2016 magnetic resonance imaging (MRI) scan of the lumbar spine revealed multilevel mild degenerative disc disease, mild spinal canal stenosis at T11-12, T12-L1, and L3-4, and mild right neural foraminal narrowing at L5-S1. Dr. Ahmad noted a clinical history of low back pain with intermittent pain and paresthesias in the lower extremity, ruling out lumbar disc diseases. She diagnosed low back contusion and lumbar spondylosis. Dr. Ahmad ordered eight physical therapy visits and reported that appellant could return to full-duty work.

In a November 1, 2016 work status report, Dr. Wilfred Anthony Williams, Board-certified in family medicine, released appellant to full-duty work on that date. An offer of a modified assignment (limited duty) was also submitted from the employing establishment for a modified carrier technician, which appellant accepted on December 21, 2016.

By decision dated October 18, 2017, OWCP denied modification of the November 7, 2016 decision denying appellant's recurrence claim finding that the medical evidence failed to establish that her need for additional medical treatment was due to a material change/worsening of her accepted work-related condition.

LEGAL PRECEDENT

The United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.[3]

A recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need

[3] 5 U.S.C. § 8103(a).

for further medical treatment after release from treatment, nor is an examination without treatment.[4]

If a claim for a recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting causal relationship between the employee's current condition and the original injury in order to meet his burden.[5]

An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury. To meet this burden, the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.[6]

Where no such rationale is present, medical evidence is of diminished probative value.[7]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of medical condition on or after September 10, 2016 causally related to her accepted December 22, 2015 employment injuries.[8]

Appellant has not alleged disability as a result of the December 22, 2015 employment injury. Instead, she attributes her recurrence due to the need for medical treatment to a change in the nature and extent of her employment-related low back condition, requiring physical therapy. Appellant, therefore, has the burden of proof to provide medical evidence to establish that her lower back injury is due to a worsening of her accepted work-related conditions.[9]

The medical evidence received in support of appellant's claim was Dr. Ahmad's September 15, 2017 report. Dr. Ahmad noted appellant's complaints of low back pain and diagnosed low back contusion and lumbar spondylosis. She ordered eight physical therapy visits and reported that appellant could return to full-duty work. While Dr. Ahmad provided a diagnosis of low back contusion and lumbar spondylosis, she failed to provide any opinion on the cause of appellant's need for continued medical treatment.[10] Nor did she provide adequate bridging

[4] 20 C.F.R. § 10.5(y).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013); *see also J.M.*, Docket No. 09-2041 (issued May 6, 2010).

[6] *A.C.*, Docket No. 17-0521 (issued April 24, 2018); *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

[7] *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988); *see Ronald C. Hand*, 49 ECAB 113 (1957).

[8] *L.G.*, Docket No. 11-0142 (issued August 12, 2011).

[9] *D.L.*, Docket No. 13-1653 (issued November 22, 2013).

[10] *Cecilia M. Corley*, 56 ECAB 662 (2005).

evidence to show a spontaneous worsening of the accepted condition.[11] Dr. Ahmed further reported that a lumbar spine MRI scan revealed multilevel mild degenerative disc disease, mild spinal canal stenosis at T11-12, T12-L1, and L3-4, and mild right neural foraminal narrowing at L5-S1. It remains unclear if appellant's need for continued medical treatment is due to the December 22, 2015 employment injury or a result of an unrelated preexisting degenerative condition.[12] A physician must provide an opinion on whether the accepted employment conditions caused or contributed to the claimant's diagnosed medical condition and supports that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical, and rationale. The Board finds that Dr. Ahmad failed to provide a rationalized medical opinion.[13] As her report contains no rationale explaining why appellant required continued treatment due to her accepted December 22, 2015 conditions on or after September 10, 2016, her opinion is insufficient to support that appellant sustained a worsening of her work-related conditions.[14]

The remaining medical evidence is insufficient to establish appellant's claim. The September 30, 2016 physical therapy note is of no probative value as registered nurses, physical therapists, and physician assistants are not considered physicians as defined under FECA.[15]

Dr. William's November 1, 2016 work status report is also of no probative value as he released appellant to full-duty work with no information pertaining to her medical condition.[16]

Appellant did not submit any medical reports from a physician who, on the basis of a complete and accurate factual and medical history, concluded that appellant required further medical treatment for her accepted conditions on or after September 10, 2016 as a result of her accepted December 22, 2015 employment injury.[17] She has failed to establish by the weight of the reliable, probative and substantial evidence, a change in the nature and extent of the injury-related condition resulting in required continued medical treatment. As appellant has not submitted any medical evidence showing that she sustained a recurrence of medical condition due to her accepted employment injury, the Board finds that she has not met her burden of proof.[18]

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

[12] *R.E.*, Docket No. 14-868 (issued September 24, 2014).

[13] *See A.C.*, *supra* note 6.

[14] *See Sedi L. Graham*, 57 ECAB 494 (2006) (medical form reports and narrative statements merely asserting causal relationship generally do not discharge a claimant's burden of proof).

[15] 5 U.S.C. § 8102(2) of FECA provides as follows: (2) 'physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005); *see 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).

[16] *S.W.*, Docket 08-2538 (issued May 21, 2009).

[17] *K.P.*, Docket No. 15-1711 (issued January 14, 2016).

[18] *L.L.*, Docket No. 13-2146 (issued March 12, 2014). *See also William A. Archer* 55 ECAB 674, 679 (2004).

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.[19]

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of medical condition on or after January 10, 2016 causally related to her accepted December 22, 2015 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 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

[19] The Board notes that a Form CA-16, authorization for examination and/or treatment, was issued by the employing establishment on December 22, 2015. When the 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, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).