

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

_____)	
T.P., Appellant)	
)	
and)	Docket No. 18-0240
)	Issued: June 18, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Irvington, NY, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 13, 2017 appellant filed a timely appeal from a September 27, 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish multilevel disc herniations causally related to an accepted July 22, 2017 employment injury.

FACTUAL HISTORY

On July 28, 2017 appellant, then a 38-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1). She alleged that, on July 22, 2017, she slipped and fell backward while descending a flight of stairs in the performance of duty, which resulted in a left ankle sprain, left

¹ 5 U.S.C. § 8101 *et seq.*

wrist pain, and low back pain. Appellant stopped work on July 22, 2017 and was transported by ambulance to a hospital emergency department for treatment.

Appellant submitted reports of computerized tomography (CT) imaging studies obtained on July 22, 2017, which demonstrated mild lumbar levoscoliosis *versus* positioning, straightening of the cervical lordosis possibly related to positioning or spasm, and no abnormalities of the brain or skull.

Appellant also provided July 22, 2017 hospital discharge instructions for a closed head injury, acute cervical strain, and a back strain. These forms were not signed by a physician.

By development letter dated August 21, 2017, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional medical and factual evidence. Appellant was also provided a list of questions for her physician regarding how the alleged employment incident would cause the claimed injuries. OWCP emphasized that her physician's detailed, well-rationalized opinion on causal relationship was crucial to her claim.

In response, appellant submitted a report dated August 4, 2017 from Dr. Rafael Abramov, an attending osteopathic physician Board-certified in physiatry. Dr. Abramov related appellant's account of the July 22, 2017 employment incident in which she fell down steps and struck her head, neck, back, both wrists, and left ankle. He noted that she presented with severe pain and required assistance with walking. On examination, Dr. Abramov observed restricted motion of the cervical and lumbar spine, bilateral wrists and shoulders, left ankle, diffuse weakness throughout the extremities, and diminished sensation in both hands. He opined that the July 22, 2017 employment incident caused "cervical, thoracic, and lumbar spine injuries, bilateral wrist and thumb injuries, left ankle injury, bilateral shoulder and trapezius sprains." Dr. Abramov ordered magnetic resonance imaging (MRI) scans of the cervical and lumbar spine. He found appellant unable to work.

In a report dated September 1, 2017, Dr. Abramov noted continued limited motion throughout the cervical and lumbar spine and all extremities. He opined that appellant was "status post injury in a fall at work on July 22, 2017, with cervical, thoracic, and lumbar spine injuries with multilevel disc herniations, bilateral wrist and thumb sprain, left ankle sprain, bilateral shoulder and trapezius sprain." Dr. Abramov prescribed additional physical therapy and a lumbar brace. He ordered electrodiagnostic studies of the upper and lower extremities to evaluate possible cervical or lumbar radiculopathy as appellant had "neck and low back pain with neurological/radicular complaints/symptoms." Dr. Abramov ordered MRI scans of both shoulders. He found that appellant remained disabled from work.

In a September 1, 2017 duty status report (Form CA-17), Dr. Abramov held appellant off work through October 13, 2017 due to "neck and back injury, bilateral shoulder injury," and "herniated discs." He checked a box marked "yes" indicating that the July 22, 2017 event caused the diagnosed injuries.

Appellant also provided an emergency medical technician report dated July 22, 2017, hospital discharge documents dated July 22, 2017, physical therapy appointment slips,² August 4

² Appellant participated in physical therapy treatments from August 4 to September 9, 2017.

and September 1, 2017 imaging study orders for MRI scans of the cervical and lumbar spine and both shoulders signed by Dr. Abramov.

By decision dated September 27, 2017, OWCP accepted appellant's claim for bilateral shoulder, trapezius, wrist, and thumb sprains, a left ankle sprain, and cervical spine strain injuries causally related to the July 22, 2017 employment incident.

By separate decision dated September 27, 2017, OWCP denied appellant's claim for multilevel disc herniations as the medical evidence of record was insufficient to establish causal relationship. It found that Dr. Abramov diagnosed multilevel disc herniations, but failed to explain how and why the accepted July 22, 2017 employment injury would have caused these conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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, that an injury was sustained while 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.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 issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁷ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 employee.⁸ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.⁹

³ *Supra* note 1.

⁴ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁵ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *M.P.*, Docket No. 17-1221 (issued August 21, 2017).

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her diagnosed herniated disc conditions were causally related to the accepted July 22, 2017 employment injury.

OWCP has accepted that appellant slipped and fell down a flight of steps on July 22, 2017 and that this incident caused bilateral shoulder, trapezius, wrist, and thumb sprains, a left ankle sprain, and a cervical spine strain. The issue, consequently, is whether the medical evidence of record is sufficient to establish that appellant's diagnosed herniated intervertebral discs were causally related to the accepted employment injury.¹⁰

Dr. Abramov, an attending Board-certified physiatrist, opined in an August 4, 2017 report that the July 22, 2017 employment event caused unspecified cervical, thoracic, and lumbar spine injuries. In a narrative report dated September 1, 2017, he diagnosed multilevel disc herniations and possible cervical and lumbar radiculopathy as a result of the July 22, 2017 fall. The Board notes that Dr. Abramov did not discuss the July 22, 2017 CT scans that demonstrated straightening of the cervical lordosis and mild lumbar levoscoliosis. Moreover, Dr. Abramov did not provide his medical reasoning as to how and why the accepted employment injury would result in herniated discs, rather, he merely offered a conclusion. The Board has found that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹¹

Additionally, Dr. Abramov checked a box marked "yes" on a duty status report (Form CA-17) dated September 1, 2017 indicating that the July 22, 2017 employment injury caused herniated discs. The Board has held that when a physician's opinion on causal relationship consists only of checking a box marked "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.¹²

Appellant also submitted July 22, 2017 emergency medical technician report, hospital discharge instructions, and appointment slips. These forms were not signed or reviewed by a physician. Medical opinions, in general, can only be given by a qualified physician.¹³ A report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence.¹⁴

In order to establish causal relationship, a physician must provide an opinion that the injury or condition for which compensation is claimed is causally related to federal employment, and such relationship must be supported with affirmative evidence, explained by medical rationale,

¹⁰ *Id.*

¹¹ *See D.L.*, Docket No. 17-0220 (issued April 18, 2018).

¹² *E.P.*, Docket No. 17-1544 (issued April 10, 2018), *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹³ *E.K.*, Docket No. 09-1827 (issued April 21, 2010); *see* 5 U.S.C. § 8101(2) (defines the term "physician" to include surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

¹⁴ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

and be based upon a complete and accurate medical and factual background of the claimant.¹⁵ Appellant was provided an opportunity to submit evidence to establish how the claimed herniated discs occurred. By development letter dated August 21, 2017, OWCP requested that appellant obtain an opinion from her attending physician which addressed causal relationship. Appellant has not submitted a medical report sufficient to show that the diagnosed multilevel intervertebral disc herniations were conditions causally related to the accepted July 22, 2017 employment injury, and thus did not 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 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 that her multilevel disc herniations were causally related to the accepted July 22, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 27, 2017 is affirmed.

Issued: June 18, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁵ See *J.W.*, Docket No. 17-0870 (issued July 12, 2017).