United States Department of Labor
Employees' Compensation Appeals Board

T.W., Appellant	)	
and	)	**Docket No. 17-1819**
	)	**Issued: March 14, 2018**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Beckley, WV, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 24, 2017 appellant filed a timely appeal from a July 25, 2017 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 the claim.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish an injury causally related to the accepted May 31, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The record provided to the Board includes evidence received after OWCP issued its July 25, 2017 decision. The Board's review of a case is limited to the evidence that was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c)(1). Therefore, the Board is precluded from considering this evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On June 3, 2017 appellant, a 31-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained lower back and left lower extremity conditions that arose in the performance of duty on May 31, 2017. She indicated that she was assisting a patient back into bed when he became combative, "kicking and pulling." Appellant experienced lower back pain that radiated down her left leg. She also reported a knot in her left calf. Appellant stopped work on June 4, 2017.

OWCP received unsigned chiropractic treatment records covering the period June 2 to 9, 2017.

In a June 9, 2017 attending physician's report (Form CA-17), Dr. Edward G. McCormick, a chiropractor, indicated that on May 31, 2017 appellant was lifting a combative patient who kicked her several times. He diagnosed employment-related "subluxation L4-5, L5-S1, pelvis, sacrum."[3] Dr. McCormick indicated that appellant was totally disabled from June 4 through July 4, 2017. He also noted that he was awaiting authorization for a lumbar magnetic resonance imaging (MRI) scan. In a June 9, 2017 duty status report (Form CA-17), Dr. McCormick advised that appellant was unable to resume work.

In a letter dated June 23, 2017, OWCP informed appellant of the evidence needed to establish her claim and she was provided a development questionnaire. Appellant was informed that the additional evidence should include a narrative report from a physician with a medical explanation as to how the alleged work incident caused or aggravated the claimed medical conditions. OWCP specifically informed her that a chiropractor was only considered a physician under FECA if a spinal subluxation was demonstrated by x-ray to exist. It also requested that appellant provide additional details regarding the alleged May 31, 2017 employment incident.

Appellant submitted her completed responses to the development questionnaire on July 3, 2017. In the response, she indicated that when she entered the patient's room she noticed his arms and legs were hanging over the bed rails and he was almost ready to fall on his face. When appellant began to put his arms and legs back onto the bed, the patient started pulling her upper body down and kicking her in the stomach. She then turned away to protect herself, but he continued pulling her down and kicking. Appellant called for help and two coworkers came in and finished pulling the patient up onto the bed. OWCP also received witness statements from two of appellant's coworkers who described the May 31, 2017 incident involving a patient who became aggressive with appellant when she attempted to move him.

An unsigned June 6, 2017 x-ray report of the lumbar spine from New River Chiropractic and Wellness Center indicated left lateral curvature of lumbar spine, subluxation of sacroiliac joint on the left, and subluxation of L3, L4, and L5. No fractures were noted.

Appellant submitted June 6, 2017 final x-ray reports from Dr. Robert B. Davis, a Board-certified diagnostic radiologist.[4] In a June 6, 2017 x-ray of the lumbar spine, Dr. Davis found no

[3] Dr. McCormick placed a mark in the "Yes" box in response to question No. 8: "Do you believe the condition(s) found was caused or aggravated by an employment activity" as previously described?

[4] Dr. McCormick was the ordering physician.

acute fracture or dislocation and noted mild levoscoliotic curvature of the spine. He provided an impression of levoscoliosis with no acute findings. In the June 6, 2017 x-ray of appellant's thoracic spine, he found no evidence of acute fracture or subluxation and provided an impression of a normal examination.

In a July 10, 2017 duty status report (Form CA-17), Dr. Sulabha Chaganaboyana, a family practitioner, released appellant to work with restrictions.

In a July 11, 2017 attending physician's report, Dr. McCormick diagnosed subluxation at L4-5, L5-S1, pelvis, and sacrum and he noted that he suspected a herniation. He indicated that the conditions were caused or aggravated by the May 31, 2017 injury as the symptoms correlated with the injury.

On July 11, 2017 appellant returned to work in a limited-duty capacity.

In a July 19, 2017 attending physician's report (Form CA-20), Christina Brash, a nurse practitioner, noted the history of the injury on May 31, 2017. She opined that the diagnosed conditions of lumbar sprain, thoracic pain, and low back pain with left sciatica were caused or aggravated by the work activity as appellant did not have pain until after the employment incident. A July 19, 2017 duty status report (Form CA-17) from Ms. Brash indicated that appellant could work with restrictions. A July 19, 2017 school/work excuse from Ms. Brash was also provided.

By decision dated July 25, 2017, OWCP denied appellant's claim, finding that she had failed to establish the medical component of fact of injury.

LEGAL PRECEDENT

A claimant seeking benefits under FECA[5] 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.[6]

To determine whether 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 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.[7] The second component is whether the employment incident caused a personal injury.[8] An employee may establish that an injury occurred in the performance

[5] *Supra* note 2.

[6] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

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

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

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.[9]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[10] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[11] 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 appellant's specific employment factor(s).[12]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[13] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[14] Additionally, chiropractors are considered physicians only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray.[15]

ANALYSIS

The Board finds that the evidence of record is sufficient to establish the medical component of fact of injury.

OWCP accepted that the May 31, 2017 employment incident occurred as alleged. However, it denied appellant's claim because she failed to establish the medical component of fact of injury. Appellant's chiropractor, Dr. McCormick, diagnosed L4-5, L5-S1 subluxations. However, OWCP found that he did not qualify as a physician because the June 6, 2017 x-ray he relied upon was not signed by a physician. To the contrary, the Board notes that the June 6, 2017 lumbar imaging report was "electronically signed" by Dr. Davis.[16] Moreover, Dr. McCormick ordered the June 6, 2017 thoracic and lumbar imaging studies. Accordingly, the Board finds that

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

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

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

[12] *Id.*

[13] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[14] *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).

[15] 5 U.S.C. § 8101(2); *see Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[16] *L.S.*, Docket No. 16-0375 (issued April 22, 2016).

Dr. McCormick is a "physician" as defined under FECA, and his diagnosis of subluxation is sufficient to establish the medical component of fact of injury.[17]

The Board further finds that although appellant established both components of fact of injury, she has not met her burden of proof to establish causal relationship.

In June 9 and July 11, 2017 attending physician's reports, Dr. McCormick diagnosed subluxations at L4-5 and L5-S1. He checked a box in his June 9, 2011 report which indicated that he believed that the diagnosis was caused or aggravated by the described employing activing or generally stating that appellant's symptoms correlated with the injury in his July 11, 2017 report. However, Dr. McCormick did not set forth medical reasoning supporting that the physical effects of the accepted incident resulted in the diagnosed condition(s).[18] The Board has held 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.[19] Therefore, Dr. McCormick's reports are insufficient to meet appellant's burden of proof.[20]

The July 19, 2017 reports from Ms. Brash, a nurse practitioner, are insufficient to meet appellant's burden of proof because Ms. Brash is not a physician as defined under FECA.[21]

While the Board finds that appellant established fact of injury, she has failed to meet her burden of proof to establish causal relationship. Accordingly, OWCP's July 25, 2017 decision is affirmed as modified.

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 an injury causally related to the accepted May 31, 2017 employment incident.

[17] *See supra* note 15.

[18] Merely checking the "yes" box on an attending physician's report (Form CA-20) will not suffice for purposes of establishing causal relationship. *See D.D.*, 57 ECAB 734, 739 (2006); *Deborah L. Beatty*, 54 ECAB 340, 341 (2003).

[19] *C.M.,* Docket No. 14-0088 (issued April 18, 2014).

[20] *Deborah L. Beatty, supra* note 18.

[21] *See supra* notes 13 and 14.

ORDER

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

Issued: March 14, 2018
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board