United States Department of Labor
Employees' Compensation Appeals Board

H.H., Appellant	)	
and	)	**Docket No. 18-0313**
	)	**Issued: May 18, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Paris, TX, 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 November 28, 2017 appellant filed a timely appeal from an August 8, 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 this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish that her diagnosed lumbar condition is causally related to the November 1, 2016 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its August 8, 2017 decision. The Board's jurisdiction is limited the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from considering this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On February 28, 2017 appellant, then a 50-year-old sales and services/distribution associate, filed a traumatic injury claim (Form CA-1) alleging that, on November 1, 2016, she injured her lower back while working "Dispatch - pushing heavy equipment…." She described her injury as lower back herniated/bulging disc. The employing establishment controverted the claim, noting that she previously filed a claim for a back injury in July 2016. As to the latest alleged injury, it questioned the date of injury, as well as what appellant was reportedly doing at the time of injury. The employing establishment further noted that it had fired her for cause, effective December 23, 2016.

A November 11, 2016 certificate to return to work signed by Dr. Victoria E. Pardue, a family practitioner, indicated that appellant had been under her care since November 3, 2016 and was awaiting the results of a magnetic resonance imaging (MRI) scan. She advised that appellant could return to limited-duty work with a 20-pound lifting restriction, and no pushing/pulling heavy objects. Appellant was instructed to follow-up in two weeks.

In a November 15, 2016 return to work slip, Dr. Michael E. Russell, a Board-certified orthopedic surgeon, asserted that appellant could perform light-duty work with no lifting, pushing, or pulling over 20 pounds. The restrictions were to remain in effect until January 1, 2017. Dr. Russell referred appellant for lumbar epidural injections.

By development letter dated March 15, 2017, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. It afforded her 30 days to submit the requested information.

OWCP subsequently received Dr. Russell's November 15, 2016 treatment notes. Dr. Russell noted that appellant presented with a chief complaint of low back and left leg pain, as well as neck pain. He also noted that she was a returning patient who was two years out from a C6-7 anterior cervical discectomy and fusion (ACDF). Dr. Russell reviewed the results of MRI scans obtained on that date. The lumbar MRI scan showed "a left-sided protruding disc in the lateral recess of L4-5" and the cervical MRI scan revealed mild degeneration of the level above appellant's fusion, but no stenosis. Dr. Russell diagnosed cervical and lumbar radiculopathy, and referred her for lumbar epidural injections. In a December 8, 2016 return to work note, he found that appellant could work with restrictions through February 1, 2017.[3]

In a March 13, 2017 duty status report (Form CA-17), Dr. Pardue noted clinical findings of "protruding disc L4-5." The reported diagnosis due to injury was lumbar region radiculopathy (ICD-10-CM Code M54.16). The date of injury was November 1, 2016 and the noted history of injury was "pushing/pulling equipment, lower back strain."

By decision dated April 21, 2017, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed condition(s) and the accepted work event.

[3] Dr. Russell adjusted appellant's lifting/pushing/pulling restriction from 20 pounds to 40 pounds.

On May 11, 2017 appellant requested reconsideration.

In a May 1, 2017 note, Dr. Pardue indicated that, while at work on November 1, 2016, appellant was required to push a large container. She further indicated that, at approximately 2:00 a.m., appellant was unable to get out of bed due to severe back pain associated with pushing the heavy bin. Dr. Pardue stated that appellant developed a herniated disc related to pushing the heavy cart at work.

OWCP also received additional copies of Dr. Russell's November 15, 2016 treatment notes and Dr. Pardue's March 9, 2017 duty status report (Form CA-17).

In a decision dated August 8, 2017, OWCP denied modification of its April 21, 2017 decision. It again found that the medical evidence of record was insufficient to establish causal relationship, noting that appellant's physicians did not provide sufficient explanation as to whether the diagnosed conditions were caused or aggravated by factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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.[5]

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.[6] The second component is whether the employment incident caused a personal injury.[7] 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.[8]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[9] 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.[10] Additionally, the physician's opinion must

[4] *See supra* note 1.

[5] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

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

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

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

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

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

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).[11]

ANALYSIS

Appellant alleged that she injured her lower back on November 1, 2016 pushing heavy equipment. She submitted contemporaneous medical evidence that included a diagnosis of left-sided L4-5 disc protrusion/herniation, as well as lumbar radiculopathy. OWCP found that appellant established both components of fact of injury, but it denied her traumatic injury claim because the medical evidence was insufficient to establish causal relationship. The Board finds that she has not established that her diagnosed lumbar condition is causally related to the accepted November 1, 2016 employment incident.

On November 15, 2016 Dr. Russell evaluated appellant for low back, left leg, and neck pain. He noted a prior history of C6-7 ACDF, and reviewed the results of recent cervical and lumbar MRI scans. The lumbar study revealed an L4-5 disc protrusion, and the cervical MRI scan showed some mild degeneration. After examination Dr. Russell diagnosed cervical and lumbar radiculopathy, recommended lumbar epidural injections, and placed her on light-duty work. However, he did not specifically address the cause of appellant's cervical and/or lumbar conditions. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[12]

In a March 13, 2017 duty status report (Form CA-17), Dr. Pardue noted clinical findings of "protruding disc L4-5," and she diagnosed lumbar region radiculopathy (ICD-10 Code M54.16). The reported history of injury was "pushing/pulling equipment, lower back strain." However, Dr. Pardue did not explain how the November 1, 2016 employment incident either caused or contributed to appellant's lumbar condition. A physician's opinion must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the accepted employment incident.[13] Consequently, the March 13, 2017 duty status report (Form CA-17) is insufficient for purposes of establishing causal relationship.

Dr. Pardue's May 1, 2017 note is similarly insufficient to satisfy appellant's burden of proof. A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[14] Dr. Pardue indicated that appellant developed a herniated disc related to pushing a "heavy cart," a "large container," and/or a "heavy bin" at work on November 1, 2016. Dr. Pardue did not reference specific examination findings and/or diagnostic studies to support the diagnosis. Also, in her May 1, 2017 note, she merely concluded that appellant's condition was employment related without explaining how pushing a large and/or heavy cart/bin/container either caused or contributed to the diagnosed condition. None of the information provided by Dr. Pardue,

[11] *Id.*

[12] *See L.B.*, Docket No. 17-1600 (issued March 9, 2018); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[13] *Supra* note 10.

[14] *Id.*

beginning with her November 11, 2016 return to work certificate, is of sufficient probative value to establish causal relationship.

The medical evidence of record is insufficient to establish causal relationship. The fact that a condition manifests itself during a period of employment is not sufficient to establish causal relationship.[15] Temporal relationship alone will not suffice.[16] Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.[17]

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 diagnosed lumbar condition was causally related to the November 1, 2016 employment incident.

[15] 20 C.F.R. § 10.115(e).

[16] *See D.I.*, 59 ECAB 158, 162 (2007).

[17] *See M.H.*, Docket No. 16-0228 (issued June 8, 2016).

ORDER

IT IS HEREBY ORDERED THAT the August 8, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 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