United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 18-0722**
	)	**Issued: November 6, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Francis, OK, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 February 20, 2018 appellant, through counsel, filed a timely appeal from a January 19, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish left shoulder, left hip, or back conditions causally related to the accepted July 19, 2016 employment incident.

FACTUAL HISTORY

On July 21, 2016 appellant, then a 33-year-old postal support, sales, and distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on July 19, 2016 she injured her back when she slipped and fell while mopping the floor in the performance of her federal employment duties. She stopped work on July 20, 2016. In an attached statement, appellant indicated that she fell backwards, hitting her head on the lobby counter. She advised that she felt sore, but continued her duties.[3]

By development letter dated July 27, 2016, OWCP informed appellant that additional evidence was needed to establish her claim. It advised her that she should submit a medical report from her physician with an explanation as to how the alleged work incident caused or aggravated the claimed condition. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant provided an emergency department report dated July 21, 2016, completed by Luann Evert, a nurse practitioner. Ms. Evert noted that appellant indicated that she fell and landed on her left elbow complaining of left hip and left shoulder pain. On physical examination appellant's musculoskeletal range of motion was normal. Appellant refused an x-ray. Discharge diagnoses were acute left-sided low back pain without sciatica and muscle spasm of the back. Ms. Evert completed a duty status report (Form CA-17) on July 21, 2016. She noted clinical findings of muscle tightness of the back and advised that appellant could return to work with a 10-pound lifting restriction.

By decision dated August 31, 2016, OWCP found that the July 19, 2016 employment incident occurred as alleged, but that the medical evidence of record was insufficient to establish causal relationship because it only contained diagnoses of pain and spasm, which were considered symptoms and not a diagnosis of a medical condition.

Appellant requested reconsideration on September 9, 2016. In a handwritten statement dated August 5, 2016, she described the employment incident and explained that following her fall she continued mopping the floor and completed her shift. Appellant then went home and rested during her break before her second shift at a different postal facility.[4] She related that she began to feel worse and called in sick that afternoon and could barely get out of bed the next day, noting that pain, stiffness, and soreness increased with each day.

In a July 28, 2016 report, Dr. M. Stephen Wilson, an orthopedic surgeon, indicated that he was seeing appellant for injuries to the thoracic and lumbar spine, left shoulder, and left hip, as a result of a July 19, 2016 slip and fall at work. He described her complaint of pain and frequent

[3] Appellant's usual work hours were 7:30 a.m. to 11:30 a.m.

[4] Appellant indicated that she worked at both the Francis and Ada postal facilities.

muscle spasms in her mid-back, exacerbated by brief periods of repetitive bending, stooping, lifting, or twisting; pain in her low back exacerbated with physical activity involving lifting, bending, twisting, and sitting or standing in a static position for prolonged periods; pain, weakness, and loss of range of motion in her left shoulder which were exacerbated with physical activity involving lifting and attempted overhead or away-from-the-body movement; and left hip pain, aggravated with any weight-bearing physical activity such as standing or walking for even brief periods of time. Dr. Wilson noted a history of lumbar fusion at L5-S1. Physical examination of the thoracic and lumbar spines demonstrated tenderness to palpation with palpable muscle spasms and multiple trigger points. Range of motion was restricted in all planes, especially in flexion and extension. Weakness against resistance was demonstrated in the thoracic and lumbar flexors and extensors and against resisted flexion and extension of the bilateral lower extremities at the hips, knees, and ankles. Straight leg raising test was negative bilaterally. Left shoulder range of motion was restricted in all planes, with crepitation and tenderness to palpation over the anterior subacromial joint, and weakness against resistance in all major muscle groups of the shoulder. Supraspinatus press test were positive. Appellant's left hip demonstrated restricted range of motion and weakness in all planes, with tenderness to palpation over the lateral aspect of the hip. Patrick's FABER test was positive. Appellant refused an x-ray during her emergency department visit on July 21, 2016, and Dr. Wilson did not perform an x-ray of appellant at any time.

Dr. Wilson diagnosed acute traumatic injuries to the thoracic and lumbar spine which resulted in anatomical abnormalities including sprain with mechanical dysfunction, trigger point formation, muscle spasm, and intervertebral disc displacement, lumbar region; acute traumatic injury the left shoulder resulting in anatomical abnormalities including bursitis; and acute traumatic injury the left hip resulting in anatomical abnormalities including possible left sacroiliitis and possible trochanteric bursitis. He opined that these injuries were causally connected to the employment incident, noting that appellant continued to have ongoing pain and weakness in the thoracic and lumbar areas of her spine, as well as in her left shoulder and left hip, which was supported by clinical examination. Dr. Wilson recommended physical therapy and prescribed medication. He provided a work limitation of 25 pounds lifting with no repetitive bending, stooping, or squatting.[5]

In reports dated August 4 through November 17, 2016, Dr. Wilson reported the same physical examination findings and diagnoses. He revised her work restrictions on August 25, September 22, and October 18, 2016. Dr. Wilson continued to recommend physical therapy.

By decision dated December 7, 2016, OWCP found the medical evidence of record insufficient to establish the claim because it did not contain a comprehensive medical opinion establishing that the diagnosed conditions were causally related to the July 19, 2016 employment incident. It found that there was no rationalized medical opinion of record explaining how appellant's accepted employment incident caused, contributed to, or aggravated her medical conditions.

On July 10, 2017 appellant, through counsel, requested reconsideration. Additional progress reports from Dr. Wilson dated December 15, 2016 to December 14, 2017 were submitted.

[5] The record does not indicate when appellant returned to work.

His description of appellant's physical examination findings and diagnoses remained the same. On April 20, 2017 Dr. Wilson noted appellant's complaint of worsening back pain and radiculopathy in the left lower extremity. He revised her work restrictions on June 22, 2015 and May 18, 2017. On July 27 and August 24, 2017 Dr. Wilson noted that appellant continued to have low back pain with intermittent left lower extremity radicular symptoms. He again revised her work restrictions. On October 26, 2017 Dr. Wilson provided new restrictions. On November 21 and December 14, 2017 he noted appellant's continued complaints of low back pain with intermittent radicular symptoms. Dr. Wilson added additional restrictions and continued to recommend physical therapy.

In a June 15, 2017 report addressed to counsel, Dr. Wilson indicated that, to his knowledge, the only preexisting injury appellant had suffered was to her lumbar spine for which she underwent a fusion at the L5-S1 level. He noted that she was working full time with minimal symptoms at the time of the July 19, 2016 fall. Dr. Wilson opined that the mechanism of any fall could cause any underlying issues to become very symptomatic and could become progressively worse with time, especially when no simple treatment, such as therapy, was approved in a timely manner.

By decision dated January 19, 2018, OWCP reviewed the merits of appellant's claim and denied modification of its prior decision. It found that the medical evidence of record did not provide a rationalized medical opinion causally relating her diagnosed conditions to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial medical evidence, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained 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.[7]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determine whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[8]

[6] *Supra* note 2.

[7] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[8] *T.H.*, 59 ECAB 388 (2008).

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[9] 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.[10] 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.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish back, left shoulder, or left hip conditions causally related to the accepted July 19, 2016 employment incident.

Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.[12] The Board finds that no physician did so in this case.

The emergency department report dated July 21, 2016 was completed by a nurse practitioner. Medical opinions, in general, can only be given by a qualified physician.[13] The Board has held that reports by a nurse practitioner are not considered medical evidence as nurse practitioners are not considered physicians under FECA.[14]

Dr. Wilson, an attending orthopedic surgeon, submitted a series of reports from July 28, 2016 to December 14, 2017 on approximately a monthly basis. In his initial July 28, 2016 report, he described appellant's slip and fall on July 29, 2016. Of note, the physical examination findings Dr. Wilson described in that report and each report thereafter over a 17-month period were exactly the same. His diagnoses also remained the same. While Dr. Wilson diagnosed intervertebral disc displacement in the thoracic and lumbar regions, there are no diagnostic studies confirming these diagnoses. In fact, the record indicates that appellant refused an x-ray during her emergency department visit on July 21, 2016, and Dr. Wilson did not perform an x-ray of appellant at any

[9] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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

[11] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[12] *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

[13] *E.K.*, Docket No. 09-1827 n.7 (issued April 21, 2010) *(citing Charley V.B. Harley*, 2 ECAB 208 (1949)); *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] *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); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law). *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

time. Moreover, as reported by Dr. Wilson, appellant had a medical history of a preexisting lumbar spine condition for which she previously had lumbar fusion at L5-S1. The record in the case at hand contains no evidence regarding this preexisting condition or the surgical fusion. Dr. Wilson failed to discuss whether appellant's preexisting injury had progressed beyond what might be expected from the natural progression of that condition and is therefore of limited probative value.[15]

The Board finds that Dr. Wilson did not provide sufficient explanation as to the mechanism of injury pertaining to the traumatic injury claim, namely, how the slip and fall on July 19, 2016 caused the numerous diagnosed conditions. Dr. Wilson merely indicated, in generalized terminology, that the diagnosed conditions arose out of, and were causally related to the employment incident, noting that appellant continued to have ongoing pain and weakness in her thoracic and lumbar spine, left shoulder, and left hip, which was supported by clinical examination. In his June 15, 2017 correspondence, he indicated that the mechanism of any fall could cause any underlying issues to become very symptomatic and could become progressively worse with time, especially when no simple treatment, such as therapy, was approved in a timely manner. Medical opinions which are speculative or equivocal in character have little probative value.[16] The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident of employment. Without specifically explaining how physiologically the July 19, 2016 fall caused or contributed to appellant's diagnosed condition, Dr. Wilson's opinion on causal relationship is equivocal in nature and of limited probative value.[17]

It is appellant's burden of proof to establish that a diagnosed condition is causally related to the accepted July 19, 2016 employment incident. As appellant submitted insufficient evidence to establish an injury caused by her accepted employment incident, she has failed to 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(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 left shoulder, left hip, or back conditions causally related to the accepted July 19, 2016 employment incident.

[15] *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

[16] *T.M.*, Docket No. 08-975 (issued February 6, 2009).

[17] *See R.A.*, Docket No. 17-1472 (issued December 6, 2017).

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 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