United States Department of Labor
Employees' Compensation Appeals Board

J.F., Appellant	)	
	)	**Docket No. 18-0904**
and	)	**Issued: November 27, 2018**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Lexington, MS, 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 March 27, 2018 appellant filed a timely appeal from an October 23, 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a lumbar injury causally related to the accepted June 9, 2017 employment incident.

FACTUAL HISTORY

On June 9, 2017 appellant, then a 51-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she experienced back pain and acute lumbar spasm as a result of

[1] 5 U.S.C. § 8101 *et seq.*

reaching over a counter to manually roll up a window. She stopped work on the date of injury and has not returned.

In support of her claim appellant submitted a June 10, 2017 attending physician's report (Form CA-20) from Dr. L.C. Tennin, Jr., an attending Board-certified internist. Dr. Tennin related a history of injury that on June 9, 2017 appellant experienced an acute onset of back pain while lifting a window at work. He noted that she had a history of chronic low back pain. Dr. Tennin provided findings on examination and diagnosed acute lumbar spasm. He checked a box marked "yes" when asked whether he believed the condition was caused or aggravated employment activity. Dr. Tennin indicated that appellant was totally disabled from her date of injury through June 22, 2017. He advised that she could return to her regular-duty work on June 26, 2017.

In a June 22, 2017 letter, the employing establishment controverted appellant's claim noting that she failed to establish either fact of injury or that the claimed medical condition was causally related to her employment.

OWCP, by development letter dated June 23, 2017, advised appellant of the deficiencies of her claim and requested that she submit additional medical evidence, including a medical report from her attending physician including a diagnosis, history of the injury, examination findings, and a rationalized opinion explaining how the reported work incident caused or aggravated her medical condition. OWCP afforded 30 days for submission of the necessary evidence.

OWCP subsequently received a series of additional reports from Dr. Tennin. In a June 27, 2017 return to work certificate, Dr. Tennin released appellant to return to work on July 23, 2017. In a June 27, 2017 physical therapy referral slip, he ordered physical therapy, three times a week, for four weeks and reiterated his diagnosis of lumbar spasm. Dr. Tennin, in a duty status report (Form CA-17) dated July 1, 2017, restated appellant's history of injury and described clinical findings. He diagnosed low back pain due to injury. Dr. Tennin noted that she could not return to her regular work duties, but she could work with restrictions.

OWCP also received July 3, 10, 12, and 14, 2017 daily notes from appellant's physical therapist who indicated a diagnosis of back muscle spasm.

By decision dated July 25, 2017, OWCP denied appellant's traumatic injury claim. It accepted that the June 9, 2017 incident occurred as alleged, but denied the claim as appellant failed to establish a diagnosed medical condition causally related to the accepted employment incident. OWCP explained that "spasm" was a symptom, not a medical diagnosis.

Additional daily notes dated July 17, 19, 24, and 26, 2017 were received from the same physical therapist who reiterated his diagnosis of back muscle spasm.

By appeal request form and a letter received by OWCP on August 10 and 11, 2017, respectively, appellant requested reconsideration of OWCP's July 25, 2017 decision and submitted additional medical evidence. She submitted an August 3, 2017 report from Dr. Tennin who again described the June 9, 2017 employment incident and discussed findings on physical examination. Dr. Tennin advised that the activity of reaching over a desk while lifting a window precipitated and aggravated appellant's chronic back pain condition.

Appellant also submitted a June 20, 2017 lumbar spine x-ray report from Dr. Ralph P. Wells, a Board-certified radiologist, who found spondylolysis of L3 with spondylolisthesis of L3 on L4 and severe associated degenerative changes.

Daily notes dated July 31 and August 2 and 4, 2017 from the same physical therapist again provided a diagnosis of back muscle spasm.

By decision dated October 23, 2017, OWCP denied modification of its July 25, 2017 decision. It found that she had not submitted sufficient rationalized medical evidence to establish causal relationship between her degenerative lumbar conditions and the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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[2] including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.[4] 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, place, and in the manner alleged.[5]

The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[6] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified incident.[7] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[8]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical

[2] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[3] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[5] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[6] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[7] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[8] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

background, 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 incident identified by the claimant.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lumbar injury causally related to the accepted June 9, 2017 employment incident.

Appellant submitted a series of reports from her attending physician, Dr. Tennin. Dr. Tennin's June 10, 2017 Form CA-20 report described the June 9, 2017 employment incident, noted appellant's history of chronic low back pain, provided examination findings, and diagnosed acute lumbar spasm. He failed, however, to provide a specific diagnosis. Spasm has been found to be a symptom, not a diagnosis.[10] Dr. Tennin did not diagnose an actual medical condition causing the spasm or pain.[11] Similarly, his July 1, 2017 Form CA-17 report reiterated appellant's history of injury. Dr. Tennin diagnosed low back pain due to injury and advised that while appellant could not perform her regular work she could work with restrictions. The Board notes that pain is a symptom, not a compensable medical diagnosis.[12] In his August 3, 2017 report, Dr. Tennin related a history of the June 9, 2017 employment incident and discussed findings on physical examination. He opined that the accepted work incident precipitated and aggravated appellant's chronic back pain condition. Dr. Tennin failed to provide a diagnosis of appellant's lumbar condition which reportedly caused lumbar pain and spasm. To establish personal injury, the medical evidence of record must document a diagnosed condition and must explain how that condition is causally related to the accepted factors of employment. Lacking a firm diagnosis and rationalized medical opinion regarding causal relationship, a medical report if of limited probative value.[13] As Dr. Tennin did not diagnose a medical condition and he did not provide a rationalized medical explanation as to how appellant's accepted employment incident caused the diagnosed medical condition, his opinion is of limited probative value.

While Dr. Wells' June 20, 2017 x-ray report did offer a diagnosis of spondylolysis of L3 with spondylolisthesis of L3 on L4 and severe associated degenerative changes. The Board has held that diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[14]

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[10] *See J.G.*, Docket No. 17-1382 (issued October 18, 2017).

[11] *See D.K.*, Docket No. 17-1186 (issued June 11, 2018).

[12] *C.M.*, Docket No. 18-0146 (issued August 16, 2018).

[13] *See D.S.*, Docket No. 18-0061 (issued May 29, 2018).

[14] *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

Appellant submitted physical therapy records in support of her claim. However, physical therapists are not considered physicians as defined under FECA. Thus, their reports are of no probative value and are insufficient to establish appellant's claim.[15]

The Board finds that appellant has failed to submit rationalized, probative medical evidence sufficient to establish that her diagnosed lumbar condition is causally related to her employment incident of June 9, 2017.[16] Appellant therefore has not met her burden of proof.

On appeal appellant contends that she submitted sufficient medical evidence to establish that she sustained a work-related back injury. An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[17] Appellant's honest belief that her accepted employment incident caused an injury, however sincerely held, does not constitute medical evidence sufficient to establish the claim.[18]

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 a lumbar injury causally related to the accepted June 9, 2017 employment incident.

[15] 5 U.S.C. § 8102(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law; *J.G.*, Docket No. 15-0251 (issued April 13, 2015); *A.C.*, Docket No. 08-1453 (issued November 18, 2008) (records from a physical therapist do not constitute competent medical opinion in support of causal relationship, as physical therapists are not considered physicians as defined under FECA).

[16] *Supra* note 13.

[17] *D.D.*, 57 ECAB 734 (2006).

[18] *See B.P.*, Docket No. 17-1572 (issued April 12, 2018).

ORDER

IT IS HEREBY ORDERED THAT the October 23, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 27, 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