United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant	)	
and	)	**Docket No. 18-1148**
	)	**Issued: November 15, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Fort Worth, 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 May 14, 2018 appellant filed a timely appeal from an April 12, 2018 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 an injury causally related to the accepted February 19, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its April 12, 2018 decision. However, "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On February 22, 2018 appellant, then a 51-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained a contusion of the left lower back while in the performance of duty on February 19, 2018 when a conveyor roller came loose. In a statement she described in detail the circumstances surrounding her injury. Appellant related that she fell to the floor onto her left hip, left elbow, and left shoulder when a defective roller came off a belt. She stopped work on February 19, 2018. The employing establishment did not controvert the claim.

In a February 20, 2018 return to work form, Dr. Andrew Garrett, a chiropractor, advised that appellant was unable to work from February 20, 2018 until approximately February 26, 2018 due to an employment injury.

Dr. Garrett, in a February 26, 2018 work capacity evaluation (OWCP-5c) form, diagnosed left elbow and shoulder pain. He indicated that appellant was unable to work. In a March 5, 2018 OWCP-5c form, Dr. Garrett again diagnosed left shoulder pain and left elbow pain. He found that appellant could resume work without restrictions effective March 6, 2018.

OWCP, by letter dated March 8, 2018, informed appellant that it had paid a limited amount of medical expenses as her claim appeared minor and was uncontroverted. It advised that it was formally adjudicating her claim and requested that she submit additional factual and medical evidence, including a report from her attending physician addressing the causal relationship between any diagnosed condition and the identified work incident. OWCP informed appellant of the limitations of chiropractic evidence under FECA.

In a March 19, 2018 duty status report (Form CA-17), Dr. Garrett diagnosed left shoulder and elbow sprain and indicated that appellant could perform her usual employment. He indicated by checking a box marked "yes" that the history of injury she provided corresponded to that on the form of a metal roller coming off a belt causing her to fall.

By decision dated April 12, 2018, OWCP denied appellant's traumatic injury claim as she failed to meet the requirements to establish an injury causally related to the accepted February 19, 2018 employment incident. It found that the medical evidence of record was insufficient to show that she sustained a diagnosed condition causally related to the identified work incident. OWCP noted that Dr. Garrett did not diagnose a subluxation of the spine as demonstrated by x-rays and thus he was not considered a physician under FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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

[3] 5 U.S.C. § 8101 *et seq.*

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]

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. 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.[6] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[7]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[8] 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.[9] 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 the specific employment factor(s).[10]

A physician, as defined under section 8101(2) of FECA, includes a chiropractor only to the extent that his or her reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[11] OWCP's regulations define subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae, which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted February 19, 2018 employment incident.

In a February 20, 2018 form report, Dr. Garrett, a chiropractor, found that appellant was unable to work until approximately February 26, 2018. In a February 26, 2018 OWCP-5c form,

[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] *See Bonnie A. Contreras*, 57 ECAB 364 (2006); *Gary J. Watling*, 52 ECAB 278 (2001).

[7] *See T.H.*, 59 ECAB 388 (2008); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[8] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 2006.

[9] *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[10] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] 5 U.S.C. § 8101(2); *see Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[12] 20 C.F.R. § 10.5(bb); *see Bruce Chameroy*, 42 ECAB 121, 126 (1990).

he diagnosed left shoulder and elbow pain and found that she could not work. Dr. Garrett released appellant to resume her usual employment in a March 5, 2018 OWCP-5c form. In a March 19, 2018 CA-17 form, he diagnosed left shoulder and elbow strain and found that she could work without limitations.

In assessing the value of evidence from a chiropractor, the initial question is whether the chiropractor is considered a physician under FECA. As discussed, section 8101(2) of FECA provides that the term physician, as used therein, includes chiropractors 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 to exist and subject to regulation by the Secretary.[13] Dr. Garrett did not provide a diagnosis of a spinal subluxation by x-ray; consequently, he is not a physician under FECA and his opinion on causal relationship does not constitute competent medical evidence.[14]

Appellant has the burden of proof to submit rationalized medical evidence establishing that she sustained an injury causally related to the accepted February 19, 2018 employment incident.[15] She failed to submit such evidence and thus did not meet her burden of proof.[16]

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 an injury causally related to the accepted February 19, 2018 employment incident.

[13] 5 U.S.C. § 8101(2).

[14] *See R.M.*, Docket No. 17-1656 (issued January 16, 2018); *E.B.*, Docket No. 17-0305 (issued July 10, 2017).

[15] *See D.T.*, Docket No. 17-1734 (issued January 18, 2018).

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

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 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