United States Department of Labor
Employees' Compensation Appeals Board

K.C., Appellant	)	
and	)	**Docket No. 17-1693**
	)	**Issued: October 29, 2018**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Tucson, AZ, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 3, 2017 appellant filed a timely appeal from a February 9, 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 a back condition causally related to the accepted May 5, 2016 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence to OWCP following its February 9, 2017 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On May 5, 2016 appellant, then a 61-year-old program manager, filed a traumatic injury claim (Form CA-1) alleging that she sustained a back injury that day after an employee "body slammed" her against a copier. She did not stop work.

On May 5, 2016 appellant was seen in the employing establishment's occupational health unit. Beth E. Lee, a nurse practitioner, diagnosed posterior thoracic back pain. She indicated that appellant had a history of chronic back pain and saw her chiropractor routinely. Ms. Lee reported that on May 5, 2016 appellant was at a copier when a coworker reached around her from behind and pushed her body onto the machine causing an aggravation of back pain. She released appellant to full-duty work without restrictions that day.

On May 6, 2016 the employing establishment provided appellant with a Form CA-16, authorization for examination and/or treatment. Appellant was authorized to visit Dr. Eric D. Sonderer, a family practitioner, in Tucson, Arizona.

Appellant submitted a referral form dated May 9, 2016, from Dr. Sonderer who referred her to physical therapy for back pain and cervical strain. She also submitted a May 13, 2016 physical therapy report.

In a May 19, 2016 claim development letter, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional factual and medical evidence.

In response, appellant submitted a May 23, 2016 report from Dr. Richard L. Klassen, a Board-certified family and occupational medicine specialist, who diagnosed cervical strain, thoracic strain, and right rib pain. Dr. Klassen advised that appellant was capable of returning to work with the following restrictions from May 23, to 31, 2016: light duty, no lifting of tables/chairs, no frequent bending below the waist, and no lifting more than 10 pounds.

On May 24, 2016 appellant accepted a light-duty job offer from the employing establishment. The duties included walking, standing, and sitting to lead health classes, as well as keyboarding and paper processing. The physical requirements included no lifting of table/chairs, no frequent bending below the waist, and no lifting more than 10 pounds.

In a second report dated May 23, 2016, Dr. Klassen continued to diagnose cervical and thoracic strain and diagnosed right rib contusion, ruling out fracture. He reiterated his opinion that appellant's conditions were causally related to being "slammed from back into copy machine." Dr. Klassen noted that appellant's angry coworker pushed her from behind, causing her to hit the right side of her chest on a copy machine.

On May 31, 2016 Dr. Klassen diagnosed sprain of cervical spine ligaments, sprain of thoracic spine ligaments, and pleurodynia. He released appellant to return to work with the following restrictions: no lifting chairs/tables, no frequent bending below the waist, and no lifting more than 10 pounds.

In a May 31, 2016 report, Dr. Klassen reiterated his diagnoses and indicated that appellant "[did] admit to some chronic problems with neck and upper back in [the] past."[3]

In a June 6, 2016 report, Dr. Klassen reiterated his diagnoses and work restrictions.

Appellant submitted physical therapy reports covering the period May 5 through June 10, 2016.

In a June 6, 2016 report, Dr. Klassen continued to diagnose cervical strain and lumbar strain.

X-rays of the cervical and lumbar spine dated May 9, 2016, demonstrated cervical and lumbar degenerative disease with grade 1 subluxation at L3-4.

On May 9, 2016 Dr. Sonderer noted that appellant's coworker pushed her into a copying machine at work and she struck her right anterior chest wall against the machine causing a mild strain to the upper neck, left shoulder area, and mid-to-upper back. He noted that appellant had a long history of back issues that were generally doing well until this episode. Dr. Sonderer opined that appellant had an exacerbation of some chronic issues with her back and neck.

In a June 17, 2016 report, Dr. Klassen reiterated his diagnoses and work restrictions.

By decision dated June 23, 2016, OWCP accepted that the May 5, 2016 employment incident occurred as alleged and that a medical condition had been diagnosed, but it denied the claim because the medical evidence of record failed to establish causal relationship between appellant's diagnosed conditions and the May 5, 2016 work incident.

On November 18, 2016 appellant requested reconsideration and submitted a physical therapy report dated June 17, 2016.

In a June 17, 2016 report, Dr. Klassen continued to diagnose cervical strain and thoracic strain and indicated that appellant's conditions were improving.

On June 29, 2016 Dr. Sonderer noted that appellant continued to have thoracic pain bilaterally and occasionally pain would radiate from the cervical spine down to the lumbar region.

In a September 23, 2016 report, Dr. Sonderer noted that appellant did not have prior thoracic injuries or complaints until after the incident at work when she was forced into a copy machine, which twisted her thoracic spine and struck the copier. He opined that appellant's condition had "become somewhat of a chronic pain syndrome." Dr. Sonderer indicated that appellant was placed on light duty, however, numerous times she had no assistance setting up her classroom, such that she had to repeatedly twist and bend. He concluded that the repeated twisting

[3] A report dated June 4, 1993, from Dr. Guillermo J. Candia, a neurosurgeon, indicated that for the past three or four years appellant had been suffering pain radiating from the right hip down to the right lower extremity. Dr. Candia found that a magnetic resonance imaging (MRI) scan study showed a right L4-5 paramedian disc herniation and reported that appellant underwent a right L4-5 laminotomy and discectomy on May 12, 1993.

and bending exacerbated appellant's pain and opined that appellant's conditions were causally related to the accepted May 5, 2016 employment incident.

By decision dated February 9, 2017, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

A claimant 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 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]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation,

[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).

[11] *Id.*

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[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 are of no probative value and will not suffice for purposes of establishing entitlement to FECA benefits.[14]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her back conditions are causally related to the accepted May 5, 2016 employment incident.

Appellant submitted May 9, 2016 x-rays in support of her claim. The x-rays demonstrated cervical and lumbar degenerative disease with grade 1 subluxation at L3-4, but these diagnostic studies do not address the etiology of appellant's back conditions.[15] The Board has held that where causal relationship is not addressed, the reports are of no probative value.[16] Appellant also submitted evidence from physical therapists and a nurse practitioner, which does not constitute competent medical evidence under FECA as those health care providers are not considered physicians as defined under FECA.[17] For these reasons, the above-noted evidence is insufficient to satisfy appellant's burden of proof with respect to causal relationship.[18]

In his reports, Dr. Klassen diagnosed cervical strain, thoracic strain, lumbar strain, right rib contusion, sprain of cervical spine ligaments, sprain of thoracic spine ligaments, and pleurodynia. He noted that appellant's coworker pushed her from behind into a copy machine causing her to hit the right side of her chest and opined that appellant's conditions were causally related to being "slammed from back into copy machine." In a May 31, 2016 report, Dr. Klassen indicated that appellant "[did] admit to some chronic problems with neck and upper back in [the] past." The Board finds that Dr. Klassen did not provide sufficient medical rationale explaining how appellant's new or preexisting conditions were caused or aggravated by being pushed into a copy machine at work on May 5, 2016. The need for rationale is particularly important as the evidence of record establishes that appellant had a preexisting back condition and surgery dating back

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[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).

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

[16] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[17] *See supra* note 14.

[18] *See supra* notes 9-11, 14.

to 1993.[19] Therefore, the Board finds that the reports from Dr. Klassen are insufficient to establish causal relationship.

Dr. Sonderer diagnosed cervical strain and opined that appellant's condition was causally related to being pushed into a copying machine at work. He noted that appellant struck her right anterior chest wall against the machine causing a mild strain to the upper neck, left shoulder area, and mid-to-upper back. Dr. Sonderer opined that appellant had an exacerbation of some chronic issues with her back and neck, noting that she had a long history of back issues that were generally doing well until this episode. On September 23, 2016 he indicated that appellant did not have any prior thoracic injuries or complaints until after the incident at work when she was forced into a copy machine, which twisted her thoracic spine and struck the copier. However, the fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.[20] Temporal relationship alone will not suffice.[21] Dr. Sonderer's reports did not include sufficient medical rationale explaining how the May 5, 2016 copy machine incident either caused or contributed to appellant's diagnosed back conditions. Again, the need for rationale is particularly important as the evidence indicates that appellant had a preexisting back condition.[22] For these reasons, the Board finds that the evidence from Dr. Sonderer is insufficient to establish that appellant's conditions are causally related to the accepted May 5, 2016 employment incident.

As appellant has not submitted any rationalized medical evidence to support her claim that she sustained a back injury causally related to the accepted May 5, 2016 employment incident, she has failed to meet her burden of proof to establish entitlement to compensation benefits.[23]

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 back condition causally related to the accepted May 5, 2016 employment incident.

[19] *See supra* note 12.

[20] 20 C.F.R. § 10.115(e).

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

[22] *See supra* note 12.

[23] The Board notes that the employing establishment issued appellant a Form CA-16 on May 6, 2016, authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. Although OWCP denied appellant's claim for an injury, it did not address whether she is entitled to reimbursement of medical expenses pursuant to the Form CA-16. *See* 20 C.F.R. §§ 10.300, 10.304; *D.M.*, Docket No. 13-535 (issued June 6, 2013).

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 29, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board