United States Department of Labor
Employees' Compensation Appeals Board

G.N., Appellant	)	
and	)	**Docket No. 18-0403**
	)	**Issued: September 13, 2018**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PATROL, Columbus, NM, 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 December 19, 2017 appellant filed a timely appeal from an October 25, 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 to consider the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a lumbar condition causally related to the accepted June 30, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the October 25, 2017 decision, OWCP received additional evidence. Appellant also submitted new evidence with her appeal to the Board. However, the Board's jurisdiction is limited to the evidence that was in the record at the time OWCP issued its final decision. Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On July 4, 2017 appellant, then a 32-year-old customs and border patrol officer, filed a traumatic injury claim (Form CA-1) alleging that, while at work on June 30, 2017, she injured her lower back when she bent over to pick up a piece of paper outside a trash bin. She did not stop work.

In support of her claim, appellant submitted work restrictions dated July 3, 2017 from Sun City West Emergency Room, prepared by Dr. Omar Mendoza, Board-certified in emergency medicine. Appellant's diagnosis was noted as nontraumatic lumbar pain associated with muscle strain.

Appellant also submitted a July 3, 2017 attending physician's form (Form CA-20) by Dr. Michael G. Fallon, an examining physician Board-certified in orthopedic surgery, who described the June 30, 2017 incident and released appellant to return to light-duty work on July 17, 2017. Dr. Fallon noted that he was waiting for the results from a magnetic resonance imaging (MRI) scan and electromyography (EMG) study for confirmation of a diagnosis.

A July 11, 2017 return to work note signed by Dr. C. Georgina Escandon, a family medicine practitioner, related that appellant was seen that day and released to return to work on July 17, 2017. Dr. Escandon diagnosed low back pain with radiculopathy to the left extremity.

In a July 12, 2017 progress note, Dr. Fallon diagnosed traumatic lumbar intervertebral disc rupture and lower left nerve root compression. Physical examination findings of the lumbosacral spine included full range of motion, nontender parapinal musculature on palpation, normal paraspinal muscle strength, no subluxations, normal paraspinal muscle tone, and no muscle atrophy. Dr. Fallon also reported an antalgic gait.

In a July 17, 2017 work capacity evaluation form (Form OWCP-5c), Dr. Fallon noted an injury date of June 30, 2017 and diagnosed lower back pain. He indicated that appellant was unable to perform her usual duties or work an eight-hour day, but was capable of performing light-duty work.

In progress notes dated July 31, 2017, Dr. Michael K. Boone, an examining Board-certified physiatrist, noted an injury date of June 30, 2017 and diagnosed traumatic lumbar intervertebral disc rupture. A physical examination revealed normal findings.

Dr. Fallon, in progress notes dated August 14, 2017, reported that appellant was seen for complaints of lumbar spine pain. He provided physical examination findings and injury history. A review of a left leg EMG was normal. Dr. Fallon reported that appellant was at work when she bent over and felt a pulling sensation in her back and burning sensation running down her legs. He diagnosed lumbar nerve root injury and traumatic lumbar intervertebral disc rupture.

By development letter dated September 5, 2017, OWCP advised appellant that, when her claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work and, since the employing establishment did not controvert continuation of pay or challenge the case, a limited amount of medical expenses were administratively approved and paid. It noted that her claim had been reopened because the medical bills had exceeded $1,500.00. OWCP

requested that appellant submit additional factual and medical evidence to establish her claim. It afforded appellant 30 days to submit the necessary evidence. Appellant did not respond.

By decision dated October 25, 2017, OWCP denied appellant's traumatic injury claim. It indicated that appellant did not respond to the September 5, 2017 development letter requesting additional medical evidence. OWCP found that the injury occurred as alleged and that she was in the performance of duty; however, medical evidence of record was insufficient to establish that the diagnosed condition was causally related to the accepted June 30, 2017 work incident.

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 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 must first be determined whether fact of injury has been established.[6] 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.[7] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[9] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.[10] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and

[3] *Id.*

[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[5] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

[7] *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[8] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

[9] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

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

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.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed lower back condition causally related to the accepted June 30, 2017 employment incident.

Dr. Mendoza treated appellant on July 3, 2017 in the Sun City Emergency Room and noted lumbar back pain associated with muscle strain. He did not, however, provide a rationalized medical opinion, based upon a history of injury, explaining how appellant's muscle strain was caused by the accepted employment incident. Dr. Mendoza's report was therefore of limited probative value.[12]

In a Form CA-20 dated July 3, 2017, Dr. Fallon noted an injury date of June 30, 2017 and indicated that appellant was capable of performing light-duty work, but he offered no diagnosis. Lacking a firm diagnosis and medical rationale on the issue of causal relationship, his report is insufficient to establish that appellant sustained an employment-related injury.[13] In a July 17, 2017 Form OWCP-5c, Dr. Fallon diagnosed lower back pain. The Board has also held that a diagnosis of "pain" does not constitute the basis for the payment of compensation.[14] Thus, these reports are insufficient to establish appellant's claim.

In other reports dated from July 11 to August 14, 2017, Dr. Fallon diagnosed traumatic lumbar intervertebral disc rupture and lower left nerve root compression, without offering an opinion regarding the cause of the diagnosed condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[15] Thus, these reports are insufficient to meet appellant's burden of proof.

The record also contains a report from Dr. Boone diagnosing traumatic lumbar intervertebral disc rupture without offering any opinion as to the cause of the diagnosed condition. As discussed above, a report which offers no opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[16] Thus, this report is insufficient to meet appellant's burden of proof.

In a letter dated September 5, 2017, OWCP requested that appellant submit a comprehensive report from her treating physician which included a reasoned explanation as to how the accepted work incident had caused her claimed injury. An award of compensation may not be

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

[12] *Id.*

[13] *See R.S.*, Docket No. 17-1139 (issued November 16, 2017).

[14] *Robert Broome*, 55 ECAB 339 (2004).

[15] *See T.W.*, Docket No. 17-1904 (issued February 16, 2018); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003); *Willie M. Miller*, 53 ECAB 697 (2002).

[16] *Id.*

based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[17] Appellant's honest belief that the accepted June 30, 2017 employment incident caused an injury, however, sincerely held, does not constitute medical evidence sufficient to establish causal relationship.[18]

Because appellant has not submitted reasoned medical evidence explaining how a diagnosed medical condition was caused by the accepted June 30, 2017 accepted employment incident, she has not met her burden of proof.[19]

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 condition causally related to the accepted June 30, 2017 employment incident.

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

[18] *See J.S.*, Docket No. 17-0967 (issued August 23, 2017).

[19] *Supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 25, 2017 is affirmed.

Issued: September 13, 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